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IN THE
APPELLATE COURT
OF MARYLAND

September Term 2022,
No. 1145 & No. 1457

JUSTIN HOLDER

Appellant

V.

JEFFREY YOUNG

Appellee

Appeal from the Circuit Court of Washington County
The Honorable Andrew F. Wilkinson

RECORD EXTRACT

Volume 5

JUSTIN HOLDER
APPELLANT

Debra M. Kline
Court Reporter
Circuit Court for Washington County
24 Summit Avenue - Room 303
Hagerstown, MD 21740
(240) 313-2547

March 24, 2022

Mr. Justin Holder
308 West Chapline Street
Sharpsburg, MD 21782

Re: Young v. Holder
Case No. C-21-CV-20-371
T/D: October 15, 2021

Dear Mr. Holder:

Enclosed please find the transcript of the hearing in the above case on October 15, 2021.

Also enclosed is my invoice for this transcript along with a refund of $3.00.

Very truly yours,

Debra M. Kline

Debra M. Kline
Court Reporter

Enclosures

IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

JEFFREY YOUNG *

Plaintiff *

v. * **CASE NO. C-21-CV-20-371**

JUSTIN HOLDER, et al. *

Defendants *

TRANSCRIPT OF PROCEEDINGS

(MOTION TO QUASH SUBPOENAS)

Circuit Court

Hagerstown, MD

March 11, 2022 at 1:19 P.M.

Before:

The Honorable Andrew F. Wilkinson

Appearances:

Edward Kuczynski, Esquire, attorney for Town of Keedysville;

Jason Parkins, Esquire, attorney for Washington County; and

Justin Holder, pro se, Defendant.

Transcribed from electronic recording by:

Linde M. Cessna, Court Reporter

Circuit Court for Washington County, Maryland

The Court House

Hagerstown, Maryland 21740

240-313-2564

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P R O C E E D I N G S

(Motion to Quash Subpoenas)

THE COURT: The Motion to Quash Subpoenas for Deposition issued to Mr. Lord, Mr. Kuczynski and Mr., is it Levy (phonetic)? Or Levy (phonetic)?

MR. HOLDER: Levy.

THE COURT: Levy.

MR. HOLDER: Yes, sir. Yes, Your Honor.

THE COURT: For deposition that I think was to have occurred on March 4. I postponed those depositions until we could have this hearing. So, we're here on the Motion to Quash from those three individuals. Counsel.

MR. PARKINS: Yes, good afternoon, Your Honor.

THE COURT: Yes, sir.

MR. PARKINS: Jason Parkins on behalf on Mayor Lord, Mr. Kuczynski and Mr. Levy. First, the subpoenas must be quashed with respect to Mayor Lord and Mr. Kuczynski and Mr. Levy under Maryland Rule 4-266 to protect them from undue burden or expense. This is particularly true where Mr. Holder has previously deposed Mr. Levy on November 16, 2021, the case ending in 430130, and he's also deposed Mayor Lord in the case ending in 116 on May 14, 2021. The deposition of Mayor Lord lasted over six hours and resulted in over a hundred pages of transcripts. I think it's quite clear that the rules don't contemplate

public officials being burdened to this extent by depositions. And as was previously discussed in the Motion to Compel hearing Mr. Holder as availed himself with the Public Information Act process and it's likely that the records he's requesting that the deponents bring to the deposition have already been obtained or simply don't exist.

With respect to Mr. Kuczynski, I think without argument, it's clear that any files he would possess relevant would pertain to his representation of the town and be subject to the attorney client privilege. And if there's any doubt we can have Mr. Kuczynski take an oath and testify as to that. But it's just the nature of his work because he maintains an independent office of the town. Alternatively, with respect to Mr. Kuczynski and in addition with respect to Mayor Lord based on their positions as Mayor and Town Attorney, they're both high ranking municipal officials. Under Maryland law a deposition of a high ranking municipal official not specifically directed to his or her misconduct is only permitted if the Plaintiff establishes exceptional circumstances exist or that the official is personally involved in a material way. Neither, neither grounds exist in this case. These cases aren't about any misconduct by Mr. Kuczynski or Mayor Lord. There's no

real suggestion that Mr. Kuczynski or Mayor Lord are involved in a material way aside from, I mean especially considering they're nonparties and they've only have a tangential relationship to the instant case.

In the subpoenas Mr. Holder seeks communications between Mr. Kuczynski and several counsel of record as well as employees of the County Attorney's Office and the State's Attorney's Office for Washington County and it's clear that these would be subject to the attorney client privilege. In addition, part of this dispute revolves around a title report, prepared, I mean arguably prepared by some title experts Jack Steich I believe it is, George Naugle, in communications Mr. Kuczynski has had with those individuals.

I think it's clear from the multitude of litigation which has arose from the initial property dispute grated all essentially concerned, almost identical factual matters, that Mr. Kuczynski to the extent he had any title report or communications with those title experts. They were done in anticipation of litigation to protect the town's interest in regards to claims which were likely contemplated at the time and definitely brought by Mr. Holder at present.

And I think - - In his opposition Mr. Holder cites to Rule 2-402(e)(1) to argue that the proposed components

must submit a privilege law or some other form of document for every privilege that they intend to invoke. However, that provision expressly applies only to documents withheld during discovery because the deposition has been stayed and our pending motion to quash no documents have been withheld at this point so we're not under that burden.

But, essentially, it's misuse of the public fisc granted that Mayor Lord and Mr. Levy have previously been deposed and I don't believe given that especially considering under Rule 2-419(c) a deposition taken in another matter can be introduced into evidence in an alternative matter. I don't believe that Mayor Lord or Mr. Levy should be subject to undue burden and expense and moreover Maryland Rule 2-510(h) a party issuing a subpoena has an affirmative burden to attempt to avoid imposing undue burden or cost when a person is subject to the subpoena. I think based on the facts before the Court it's quite clear that Mr. Holder has not taken those steps.

THE COURT: Okay. Thank you sir.

MR. PARKINS: Thank you.

THE COURT: Alright, Mr. Holder. Do you wish to be heard, sir?

MR. HOLDER: Yes, sir. Yes, Yes, Your Honor. Thank

you. I think that as far as acknowledging the existing law of deliberative process privilege executed privilege I think we're both at the same point. I cited *Board of Physician's Assistant,* which is citing *Hamilton,* and *Hamilton v. Berdow*, which is a 1980 case where the US District Court asked Maryland Court of Appeals to certify that specific question. First off, as a matter of law in *Hamilton vs. Berdow* they say that you need to provide an affidavit if you're going to assert an executive privilege that affidavit hadn't been provided. And then I would point the Court to footnote number 8. And footnote number 8 says when your litigation and you're opposing the government and they are a party, which I acknowledge they're not a party to this suit, but like he said, to the whole claim, to the facts, they're a party to this. And they have, they can take an advantage by not producing the documents and it just says in footnote number 8 you can have the Court resolve that against that party. They should produce them. And then you'll also notice in my opposition I limited it. I set upon some facts. And I'm not asking for how we got from the Mayor's May 22 email to the Sheriff of - - There's no easement to posting in the town minutes in November 21 roads that are in inventory but are no longer in use and this pertains particularly to the wagon road. That is a

deliberative process privilege. Mr. Joliet and the Plaintiff and other parties are relying on what they believed that the town of Keedysville has either said to them publicly or Ms. Morral's statements that have been made publicly and these other statements to form a basis of their opinion and without being able to cross - -

THE COURT: Opinion of what?

MR. HOLDER: Their opinion of the title. Their opinion of the road was lost maybe due to latches or some type of abandonment for mere than mere non-use.

THE COURT: And is it only the wagon road that you're talking about?

MR. HOLDER: It is only the wagon road in this case.

THE COURT: May I ask you a question about the wagon road?

MR. HOLDER: Yes, Your Honor, absolutely.

THE COURT: Okay, so there's the wagon road.

MR. HOLDER: Yes.

THE COURT: And then in the other case that we talked about today there's Harris Lane, there's the old road to Keedysville, there's the road from the 1974 comp plant, right?

MR. HOLDER: Yes.

THE COURT: Is the wagon road any of those roads?

MR. HOLDER: The wagon road according to the

Department of Natural Resources is not any of those roads.

THE COURT: Okay.

MR. HOLDER: The wagon road is an express easement that's never been developed based on the metes and bounds description by the expresses - -

THE COURT: Where does it run? Where does it run?

MR. HOLDER: Parallel to the railroad on through what they call as the town's forest conservation and storm water management.

THE COURT: As related to Stonecrest?

MR. HOLDER: Yes, correct.

THE COURT: The forest conservation for Stonecrest?

MR. HOLDER: Yes. And if you look at the prescriptive path - -

THE COURT: Who was that easement for the old wagon road grated to originally?

MR. HOLDER: David Kretzer who, like I said we had the (unintelligible) 520, Sam Cost stoned it off. His son Aaron got it, granted to them the use of wagon road. There was a confirmatory deed in 1918 confirming it as a right of way and, yeah, that was 1918 and then there's substantial arial photos and prescriptive evidence maps, things like that, over the years. I, you know, per my interrogatories I used to ride my bike there as a paper

boy. We used to ride dirt bikes. Stonecrest comes in, we put stormwater there we built fences in now it's gone.

THE COURT: Okay. To whom was the easement benefiting?

MR. HOLDER: Oh, I'm sorry. I'm sorry. David Kretzer was a predecessor and title to Uncle Eddies Broke Down Palace and Deena Holder.

THE COURT: But it's on the Stonecrest side of the railroad track?

MR. HOLDER: It is on the Stonecrest side of the railroad track and the Stonecrest side of the right of way line which is a big distinction that DNR is making in this instant litigation that hey, you know, the express metes and bounds of this thing is outside of what we believe our interest to be and then I think the town, county's position is push it back over to the prescriptive path which would be more or less where I believe that the road was ever only opened is over the prescriptive path. I don't believe that the metes and bounds portion of the road was ever opened. I believe it was always a prescriptive path which Harry's Lane purports to run parallel to the railroad tracks, southeast of Keedysville and they name a street Antietam Drive. So, there's clearly two separate dedications to two separate public easements and gross in that, you know

what I interpret. I'm not going to give a legal definition.

THE COURT: Okay. So, the old wagon road is not any of the other roads. It ran on the Stonecrest side of - -

MR. HOLDER: Correct, and section - -

THE COURT: - - of the railroad - -

MR. HOLDER: Yes. Chapter 334 of the Acts of 1864. Section 12, stated when the railroad came through for landlocked owners the railroad had, shall, create ways and access to a public road for people it cut off and if you look at the maps this wagon road little section departs from the town of Keedysville, the road to Keedysville and it starts to show up on maps after the railroad comes through.

THE COURT: And yet then the town and the county both or one of the two, authorizes the development of Stonecrest.

MR. HOLDER: Both authorized - - Both they both signed the plat sure.

THE COURT: But, the old wagon road was a public way, right?

MR. HOLDER: I believe it to be. I believe there's prescription. I believe it's on the map downstairs.

THE COURT: Prescription on who's favor? But - -

MR. HOLDER: Uh, prescription - -

THE COURT: See, here's what I'm asking.

MR. HOLDER: - - on the public (unintelligible).

THE COURT: Throughout your pleadings I sort of read your contention to be that the old wagon road was a public way.

MR. HOLDER: I believe it is - -

THE COURT: It just didn't benefit one landowner. It was open to the public.

MR. HOLDER: It was. Melvin Griffith lived - -

THE COURT: My question is once, once the government decides to build a neighborhood over a public way isn't the public way gone? You don't need to answer that right now but I want you to think about it.

MR. HOLDER: I have been. That's exactly why I'm trying to get the information correct.

THE COURT: Isn't that the problem?

MR. HOLDER: That is the problem.

THE COURT: Okay, alright. So, you want to take Levy's deposition, Lord's deposition and Kuczynski's deposition?

MR. HOLDER: I do. Or I would just like to get the factual evidence that they're or even an affidavit that they haven't provided any factual evidence to the experts that apparently are telling me they relied on it so I can preclude the experts from coming to trial and saying, hey

the town of Keedysville said this and now I form my opinion.

THE COURT: But that's the purpose of an expert deposition. You take the deposition of the expert and you ask the expert who have you talked to.

MR. HOLDER: Correct.

THE COURT: What did they tell you? What are you relying on basing your opinion? That's how you get that.

MR. HOLDER: Right.

THE COURT: That's how you get it.

MR. HOLDER: That is.

THE COURT: Okay.

MR. HOLDER: I did that.

THE COURT: Okay. So why do you need Levy, Lord and Kuczynski?

MR. HOLDER: Well, because in the 116 case nobody's really provided a defensive truth. So - -

THE COURT: The what?

MR. HOLDER: A defensive truth.

THE COURT: What is it?

MR. HOLDER: A defensive truth for the defamation. They haven't put up the defensive truth. They just said we're immune. We're allowed to lie.

THE COURT: Because we're the government?

MR. HOLDER: Cuz we're the government. And we're

allowed to lie and I get it. You know, they need immunity. I get that. But if they were just lying - -

THE COURT: I don't know if they're allowed to lie.

MR. HOLDER: - - to cover up this road or this plat.

THE COURT: I just don't that they can be sued to lie, they can be sued for lying. And there's a distinction.

MR. HOLDER: They have to be malicious I agree. And, you know - -

THE COURT: Okay. But in this case, in this case - -

MR. HOLDER: Right.

THE COURT: - - what information are you hoping to illicit from either of those three deponents? Because what I've heard so far you tell me is you want to know what they told the experts in this case.

MR. HOLDER: Relevant to their access. Um, executive privilege, yes. That would be the only reason as far as fact witnesses Mr. Levy lived beside the subject property for thirty-two years the entire time that Mr. Young owned the property. He would have saw everybody that went in and out the driveway; everybody that's driven in and out of the driveway. He was involved in great detail in the Stonecrest development. He got title to some land in the Stonecrest development from the developer during the process. So, he was very intimately involved, and, you

know, whatever the government's intent was with signing that plat - -

THE COURT: Where - - Well not their intent, that, you don't get to know that.

MR. HOLDER: Right.

THE COURT: But as far as Levy living next door you say to the subject property.

MR. HOLDER: Correct.

THE COURT: Where did he live?

MR. HOLDER: 9 Dogstreet Road.

THE COURT: And where is that in relation - - What are you calling the subject property?

MR. HOLDER: 13 Dogstreet Road. And there is no - - Well, my property, my remaining lands, I call 11 Dogstreet Road.

THE COURT: Okay. So, you believe Levy's important at least discoverable because he actually lived next to the land?

MR. HOLDER: Yeah, I mean, a limited scope just to that would be sufficient.

THE COURT: Okay.

MR. HOLDER: I did take a thirty-seven minute deposition in the *Estes* case upon which objection was made anytime I've went outside of what they believed to be relevant.

THE COURT: Fair.
MR. HOLDER: So, I've kept it narrow.
THE COURT: Okay.
MR. HOLDER: And kept it tight.
THE COURT: Alright, so that's Mr. Levy.
MR. HOLDER: Yes.
THE COURT: Mr. Lord. What are you hoping to find from Mr. Lord?
MR. HOLDER: If he personally has any factual knowledge of abandonment, termination or of this wagon road, if he just, if he personally has person knowledge or any material evidence that would be relevant to the instant case, factual. Nothing about the process, nothing else. Just a very, very limited scope or even if he would just provide an Affidavit everything I know I told you in the 116 case that would be fine.
THE COURT: Okay. Which still begs the question that I have is the moment the town or the county agree that Stonecrest can be built right over top of this road isn't, haven't they indicated their abandonment? You don't have to answer that. I just want you to know that's what's in my mind.
MR. HOLDER: Isn't it a decisive character. That's one for the jury. Was it a decisive character that showed their object manifestation of intent?

THE COURT: I think it's over the judge.

MR. HOLDER: Okay.

THE COURT: Okay. So, Mr. Lord, if he has any personal knowledge other than what he has already told you in deposition in the 116 case without the abandonment of the wagon road.

MR. HOLDER: Correct. Correct.

THE COURT: Okay. Mr. Kuczynski.

MR. HOLDER: After reading the County's opposition and all the replies thereto and analyzing the case law I believe that Mr. Kuczynski's deposition and what they deliberated about is material to the 116 case. I don't believe Mr. Kuczynski any more has factual evidence to this case. I'll deal with that in Jack Steich's hearing next. And I want to withdraw my request and withdraw the Notice of Deposition of Mr. Kuczynski in this case.

THE COURT: Good because I was going to deny you anyways.

MR. HOLDER: I saw it.

THE COURT: You don't get to take the deposition of any attorney on how they do their job and what they learned. Okay.

MR. HOLDER: Understood. Understood.

THE COURT: Okay, alright. Alright, sir. Any follow-up then?

MR. PARKINS: Yes if I may?

THE COURT: So, basically what Mr. Holder is saying is Levy lived next door to this subject property for thirty years and he would be willing to limit it. The scope of that deposition just to what he saw as a citizen and a neighbor. And then with, respect to Mr. Lord who already testified in the 116 case Mr. Holder would accept an affidavit that said, hey, everything I know, I told you in the 116 case or I don't have any personal knowledge beyond what I've already told you about whether Wagon Road was ever abandoned.

MR. PARKINS: Yes, Your Honor.

THE COURT: What are your thoughts?

MR. PARKINS: Mr. Levy as a fact witness I'm not sure living next door to a property or not even next door seems based on the street numbers. I'm not sure that's sufficient.

THE COURT: I'll look them up. I'll look up the street numbers.

MR. PARKINS: I'm not sure that's sufficient to render them a fact witness.

THE COURT: Okay.

MR. PARKINS: And plus, he's already been deposed previously, shouldn't be subject to the undue burden and expense of complying with any more depositions because

granted the numerous litigations have arised out of the property dispute. There's no telling how many times Mr. Holder could attempt to depose any of the town officials. Mayor Lord, any factual knowledge of abandonment he testified to during his deposition in the 116 case. I think you recognized. And it's over two hundred pages - -

THE COURT: Well, I haven't seen his transcript in 116, so I don't know.

MR. PARKINS: Oh, okay.

THE COURT: But if you're proffering to me that you think you did - -

MR. PARKINS: Yes.

THE COURT: Okay.

MR. PARKINS: It's over - - the transcript is over two hundred pages and he was asked about abandonment of the county's rights - -

THE COURT: The town's rights.

MR. PARKINS: - - interests in whatever roads may be at issue here. And I think that's about all we have.

THE COURT: Okay.

MR. PARKINS: Because Mr. Holder is willing to withdraw the Notice of Deposition of Mr. Kuczynski. So, we have no further arguments about attorney client privilege, work product doctrine.

THE COURT: Okay. Alright, with respect to the Motion to Quash Depositions I'll do them individually. Mr. Kuczynski, the Motion to Quash is granted. Mr. Holder has indicated no desire to take that deposition. I would not have allowed it anyways. With respect to Mayor Lord, it appears that he has been deposed significantly already and that he is accepting the proffer of counsel he already testified as to abandonment of the various roads. And I, even if he had not testified as to the abandonment of the wagon road I'm not sure how he could testify as a citizen and what his personal knowledge is versus his executive knowledge as the Mayor of Keedysville and so that Motion to Quash is granted. Mr. Levy I'm going to think about because I need to look up addresses and I need to see where his house was in relation to the area of in dispute in the *Young* case. And that would drive my determination. If I do grant it it's going to be very, very limited.

MR. HOLDER: It probably be a fifteen-minute deposition.

THE COURT: If I grant it, it's going to be limited to his observations as a neighbor standing on his property.

MR. HOLDER: Okay.

THE COURT: Nothing about him being a former employee

or elected official of the town of Keedysville.

MR. KUCZYNSKI: And, Your Honor, and not to belabor it, but the subpoenas I think that the Court has seen with the duces tecum are rather comprehensive so I would like to make sure that it doesn't leave that door open that he can ask fifteen minutes worth of questions and still require Mr. Levy in some way to bring the box full of documents that he is requesting.

THE COURT: No, it's going to be absolutely limited to testimony only.

MR. KUCZYNSKI: Okay. Thank you.

THE COURT: I'll make a decision and issue an order on Levy, okay.

MR. HOLDER: Thank Your Honor.

THE COURT: Okay.

END OF PROCEEDINGS AT 1:42 P.M.

DIGITALLY SIGNED CERTIFICATE

I HEREBY CERTIFY that I reported verbatim by electronic device the proceedings in the matter of, *Jeffrey Young v. Justin Holder, et al.,* Case No. C-21-CV-20-371 in the Circuit Court for Washington County, on March 11, 2022, before the Honorable Andrew F. Wilkinson, Judge.

I further certify that the proceedings were transcribed by me to the best of my ability in a complete and accurate manner, and page numbers 1 through 21 constitute the official transcript of the proceedings.

In witness whereof, I have affixed my signature this 5th day of April, 2022.

Linde M. Cessna

Linde M. Cessna
Court Reporter

Debra M. Kline
Court Reporter
Circuit Court for Washington County
24 Summit Avenue - Room 303
Hagerstown, MD 21740
(240) 313-2547

March 24, 2022

Mr. Justin Holder
308 West Chapline Street
Sharpsburg, MD 21782

Re: Young v. Holder
Case No. C-21-CV-20-371
T/D: October 15, 2021

Original transcript of hearing in above case on October 15, 2021

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IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

JEFFREY YOUNG

vs. CASE NO. C-21-CV-20-371

JUSTIN HOLDER, et al.

TRANSCRIPT OF PROCEEDINGS

MOTIONS

Hagerstown, Maryland 21740
October 15, 2021

BEFORE:

THE HONORABLE MARK K. BOYER, JUDGE

APPEARANCES:

For the Plaintiff:
R. David Pembroke, Esquire

For the Defendant:
Justin Holder, pro se

Transcribed from electronic recording by:

Debra M. Kline, Court Reporter
Circuit Court for Washington County, Maryland
24 Summit Avenue
Hagerstown, Maryland 21740
240-313-2547

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P R O C E E D I N G S

(Whereupon this matter convened at 9:37 A.M.)

THE COURT: Good morning. Please be seated. This is *Jeffrey Young v. Justin Holder, et al.* C-21-CV-20-371. The matter is set for a motions hearing today.

I've reviewed the file and I think we may have three open motions in this file but I'll defer to counsel and Mr. Holder as to what you anticipate we're going to address today. Mr. Pembroke.

MR. PEMBROKE: Your Honor, my understanding is that today's proceeding is limited to the motion to compel discovery.

THE COURT: Okay. Well is that your understanding, Mr. Holder?

MR. HOLDER: Uh, I was hoping to be heard at least on two open motions - the motion to alter or amend the protective order from a non-party, and the motion to compel.

MR. PEMBROKE: I believe the -- I'm sorry.

THE COURT: There was an objection to a, a subpoena filed by Olde Towne Title. And an opposition filed to that. Has that been ruled on?

MR. HOLDER: It hasn't been ruled on but they complied with the subpoena, Your Honor, so it is effectively moot.

THE COURT: Well then I'm going to rule on it.

So you're satisfied with their response to that subpoena?

MR. HOLDER: Yes, Your Honor.

THE COURT: All right. Well in that case the motion titled - objection to subpoena filed by Ms. Powell, I believe, on behalf of Olde Towne Title is denied as moot. And I will prepare an order saying that.

Now the other motion that you wanted to be heard on that's not Mr. Pembroke's is a motion -- when I -- I granted a motion to quash; correct?

MR. HOLDER: That's correct.

THE COURT: I, I read through your opposition and I guess nobody is here from -- well who was that other party? Let me find out.

MR. HOLDER: It was Ms. Morral and her attorney was Peter Rogers.

THE COURT: All right. That's right.

MR. HOLDER: Mr. Rogers, yes.

THE COURT: All right. Nobody is here for that. But it's my understanding after reading your opposition -- or I'm sorry, your motion to amend, that that deposition actually already occurred. It occurred prior to me signing the motion to quash; correct?

MR. HOLDER: It, it did. It was very, very limited

in scope as there was probably five hours of objections and, and about an hour of testimony that was very relevant to the instant case.

THE COURT: But it happened, the deposition happened.

MR. HOLDER: It did happen, yes, sir. And, and I didn't believe the Court was aware of that when they granted the order.

THE COURT: I -- clearly I wasn't. The wheels of bureaucracy turn slow.

MR. HOLDER: I understand.

THE COURT: But my motion to quash that I granted on September 28th happened almost two weeks after the deposition actually had occurred; correct?

MR. HOLDER: That is correct. It defer--

THE COURT: So my -- at that point I should have just denied that motion as being moot; correct?

MR. HOLDER: I thought about filing a opposition -- or a, a response to, to them stating it was moot, or a line. And I, I didn't do it. I didn't know if that would have been appropriate, but I didn't.

THE COURT: All right. So likewise, your motion for me to alter or amend my order is also moot; isn't it? Because it's not going to have any effect.

MR. HOLDER: Well I also asked to compel the

documents. She, she -- in, in the dis-- in the deposition I asked her if they even existed. And they refused to answer that question. And there are pictures and video evidence of the property that's, that's in dispute that may or may not show no trespassing signs, use and possession of the land, that I would like to have for discovery in this case that the Defendant has not produced.

THE COURT: So your motion to alter or amend also included a request to compel?

MR. HOLDER: It did. In the wherefore section at the bottom.

THE COURT: All right. Well that's not going to be satisfactory. If you want to, if you want to go down that road, you're going to have to file a motion to compel.

MR. HOLDER: Okay.

THE COURT: So I am going to deny your motion to alter or amend as also being moot. My motion [sic] to quash obviously had no effect nor does it affect the admissibility of anything that may have been obtained by testimony or produ-- production of documents at that hearing. So I'm denying your request to alter or amend that order.

MR. HOLDER: Can I ask the Court for leave to

request a new deposition for the documents of the deponent then?

THE COURT: To request another deposition?

MR. HOLDER: Or to compel the documents in the --

THE COURT: You can file a motion.

MR. HOLDER: To compel?

THE COURT: Correct.

MR. HOLDER: Okay.

THE COURT: And it will be considered.

MR. HOLDER: Okay. Thank you.

THE COURT: All right. So we're down to one motion and that is - Mr. Young [sic], you filed a motion to compel discovery. There is an opposition filed by Mr. Pembroke on behalf of Mr. Young. And then you filed a reply; correct?

MR. HOLDER: That's correct.

THE COURT: All right. Go ahead. Your motion.

MR. HOLDER: Would Your Honor accept some exhibits?

THE COURT: If -- one at a time, I guess, when we figure out what they are.

MR. HOLDER: It's a 3-D and it's the minutes from the planning and zoning.

MR. PEMBROKE: I'm going to object, Your Honor.

THE COURT: Okay. What's the basis of the objection?

MR. PEMBROKE: Well Your Honor, we're here on a motion, on a motion to compel. I don't know what relevance at this motion these deeds could possibly have.

THE COURT: All right.

MR. PEMBROKE: The question, the question I think for the Court is going to be, I suppose, to consider, to consider the request that was made, to consider the response that was made, and determine the adequacy of the response and the appropriateness of the request.

THE COURT: All right. Mr. Holder, tell me why these deeds in, in these minutes are relevant to this motion.

MR. HOLDER: The first part of the discovery I've asked to compel, Your Honor, was an RFA, lines one through four, which was the change of title to both of the prop--

THE COURT: RFA? Request for admissions? Are you using shorthand here on me?

MR. HOLDER: I, I'm sorry. I apologize.

THE COURT: Yeah, I'm not going to keep up with that.

MR. HOLDER: Okay. The request for admissions number, number one, I asked for the first four only not, not the entire request, just the first four that I include a change of title to both properties to be

compelled. I thought that would expedite justice and the ultimate trial.

Mr. Pembroke did file a notice of expert designation, but he, he just simply wrote four peoples names on a list and I have no idea what the experts are going to opine to in that notice. And I have to be able to provide, you know, a rebuttal expert for their experts. And it would, it would really limit --

THE COURT: All right. So your argument is that Mr. Pembroke hasn't been specific enough with who his experts are and what they're going to testify to?

MR. HOLDER: I, I would at least hope for a general or generic statement that, you know, the, the experts have testified. That's something that came up after this motion --

MR. PEMBROKE: Your Honor, I would object. That's not -- that is not part of the stated motion, Your Honor. The designation of the expert witness was not due when this motion to compel was filed --

THE COURT: All right. Well let's stick to this motion.

Okay. Mr. Holder, what I've got here -- what is it that you believe has not been complied with? What, what discovery request as of the filing of your motion have not been complied with that you believe are

appropriately complied with?

MR. HOLDER: Request for admissions one have been refused to be answered. They provided links to the entire chains of title to both my property and the Plaintiff's property.

THE COURT: They provided links?

MR. HOLDER: They were Dropbox links of files.

THE COURT: Okay.

MR. HOLDER: About a thousand land records.

THE COURT: Okay. What did you want?

MR. HOLDER: Them to admit that they were the valid land records in the Washington County land records department. I can --

THE COURT: Well Mr. Young's not the clerk of court. He can't certify they're valid land records; can he?

MR. HOLDER: Well, Your Honor, if we both agree that they're the valid land records, it would save us probably two days of trial and title experts. So I, I thought Mr. Young might want to save some money, that's all.

THE COURT: Well look, what you're asking for it sounds like is a stipulation that this is the chain of title.

MR. HOLDER: Or, or an admission.

THE COURT: What was the response to that one?

MR. PEMBROKE: Your Honor, the response was at the

time Mr. Holder was represented by counsel, Mr. Greivell. He send the link over. We were not able to access the link.

THE COURT: I see.

MR. PEMBROKE: I've called Mr. Greivell, told him - can't access the link. He provided some assistance to us in the attempt to open the link. That failed. We were still not able to open the link. I told -- so when I responded to the request for admissions, I said we couldn't open the link. Communicated. We couldn't open the link. Further responded I, I think -- he sent -- Mr. Holder and/or counsel sent three separate admissions, some when he was represented and I think at least one when he wasn't. So I believe Mr. Greivell was still representing him when I responded to the request for that admission. And I said - if you will provide the documents to me, be more than happy to review them and respond.

THE COURT: All right. That --

MR. PEMBROKE: But I didn't have access to the documents.

THE COURT: Okay. At the time, at the time of your formal response I assume.

MR. PEMBROKE: Well and up till -- up to and including today.

THE COURT: Okay. Mr. Holder, how can he admit to something he hasn't seen?

MR. HOLDER: I believe I've worked in good faith with counsel. I've asked if we could provide a drive link. It's -- you know, there's some other electronic form. He, he's requesting that I print out a thousand land records and hand them to him in paper for him to respond.

THE COURT: Well you're the one asking for the admission. So if you can't get the documents to him some way, how can he admit to them?

MR. HOLDER: Well I believe he can see the link. I, I don't believe what he's saying to be true to be honest with you. Um, everybody else has been able to see the link. We sent him a, we sent him a discovery link with twenty-two gigabytes with files in it, and he, he was able to open that.

THE COURT: So you want to send a thousand pages by link to Mr. Pembroke. Basically have him or his title expert review them for accuracy, compare them to what they know are in the land records, and then have Mr. Young sign off and say - yep, that's them?

MR. HOLDER: Yes.

THE COURT: Denied. What's your next issue?

MR. HOLDER: On the complaint, at number fifteen,

Plaintiff alleges the last owner of parcel three shown on aforesaid plat is unknown.

On the Plaintiff's seventeen - over the last several months, Defendant Justin Holder's attempted to enter the aforesaid property to construct a roadway over said property thereby damaging/destroying nature, trees, and underbrush. His efforts were thwarted by neighbors. And it goes on to say that - bringing or attempting to bring others including surveyors, heavy equipment, electronic -- electricians, and well drillers upon Plaintiff's land, some of whom reported to Plaintiff that Defendant Justin Holder claimed to them to have purchased the property from a developer.

In exhibit one you'll see the grantor on that deed was Stonecrest Development, LLC. So I contend that the Plaintiff does know who the owner of parcel three is and it, it wasn't unknown to him when he filed the complaint. And that was --

THE COURT: So you requested an admission on that? Or what was the discovery request on that issue?

MR. HOLDER: Well I decided that if, if you follow the complaint, he's claiming possession through adverse --

THE COURT: Adverse possession.

MR. HOLDER: -- adverse means. So --

THE COURT: So he's claiming he owns it?

MR. HOLDER: Through adverse possession.

THE COURT: Understood.

MR. HOLDER: Well, you know, that would be a claim under the law it wouldn't necessarily be the jurisdiction to quiet his title, but that, that's a different argument.

THE COURT: I'm not even sure what that string of words mean.

Let me ask you this - what is the discovery request on this issue that you don't believe was complied with and I should order him to, to comply?

MR. HOLDER: Request twenty-five. I just asked a straight-forward question - have you provided me all evidence of adverse possession, yes or no? And they refused to answer just that simple question. Either I need to continue to do discovery to find more factual evidence or, or I don't.

THE COURT: This was a, this was an interrogatory?

MR. HOLDER: It was just a request for admission.

THE COURT: A request for admission - have you provided all evidence? Or all --

MR. HOLDER: Have you provided all factual evidence of adverse possession?

THE COURT: Well Mr. Pembroke, what was the response

to that?

MR. PEMBROKE: Your Honor, as I said, he sent three. That if he could identify which request it was.

THE COURT: Okay.

MR. HOLDER: That's going to be on request for admission three, number twenty-five.

MR. PEMBROKE: Here, if I might, Your Honor.

THE COURT: I have it in front of me now, go -- but go ahead.

MR. PEMBROKE: It says - admit Jeffrey Young has produced in discovery all - capitalized, small - factual evidence of exclusive notorious hostile use of the lands described as parcel three in his complaint.

The answer is - unable to provide an answer at this time. We will supplement promptly.

And at that point, Your Honor, discovery is still open based on the scheduling order. I cannot have my client admit that all factual evidence has been provided to him at this point. We're still in the discovery process.

THE COURT: Well I have a, it must be a later response, I have - neither admitted or -- nor denied. And Mr. Holder, you let me know if I'm on the one that you're expecting.

MR. HOLDER: That's correct.

THE COURT: Neither admitted nor denied. However, Plaintiff states that he has been in peaceful, constructive, and actual possession of the land described in the complaint since his acquisition of the property.

Does that sound like the most recent response?

MR. PEMBROKE: That could be one. I'm reading, I'm reading from answers to requests for admissions number three --

MR. HOLDER: I, I believe that --

MR. PEMBROKE: -- it would have been filed June the 7th of this year.

MR. HOLDER: You, you updated it on July the 30th.

THE COURT: August 15th. There's an August 15th response it looks like.

MR. PEMBROKE: But essentially the basis of the, the basis of the issue is discovery is still open so I cannot have my client admit that, that he has provided all factual evidence at this point.

THE COURT: Well --

MR. HOLDER: He could deny it; couldn't he?

THE COURT: I guess I'm trying to -- it's kind of -- it's a little bit of a square peg in a round hole. You're not as-- you're not stating a fact and asking for an admission to that fact. You're, you're basically asking - have you complied and given me everything?

It's neither admitted nor denied. Mr. Pembroke is aware of his ongoing responsibility with regard to supplementing discovery.

You also have a, you also have a redress on this issue that if something comes up in trial that you've not been provided in discovery, you can object to it, have it be stricken because they haven't complied.

Here's -- look, I'm going to deny your motion to compel on this issue because Mr. Young is already under an obligation under law --

MR. HOLDER: Correct.

THE COURT: -- to comply and satisfy and supplement discovery. So if evidence comes up or they discover evidence or think of evidence they hadn't thought of before, they have to tell you if it satisfies your requests. And if they don't, the presiding judge at trial can strike that based on an objection because they didn't provide it in discovery.

So I'm going, I'm going to deny it at this point.

MR. HOLDER: Okay.

THE COURT: It's probably -- it's -- actually I'll deny it at this point, recognizing that you may very well raise it at trial if something comes up that you're surprised about that would have been responsive to your

request. All right?

MR. HOLDER: I appreciate that.

THE COURT: All right. What's the next one?

MR. HOLDER: Ba-- basically the, the others are, are just more, more of the same - possession of the land that -- number five, that if the Plaintiff is -- is that the Defendant is seized of the lands and in actual possession of the lands and the metes and bounds of his legal title. And Plaintiff objected that it was a legal conclusion, however, he pled to be in actual possession of parcel three of the complaint and therefore was able to make the same type of legal conclusion when he pled it in the complaint so I was a little confused.

THE COURT: Sho-- point me to your, your said number -- request for admission --

MR. HOLDER: Number five --

THE COURT: -- five?

MR. HOLDER: -- in the request for admission. Yeah. It's going to be number three on my motion to compel discovery, at page five of the motion.

THE COURT: That says RFA 3?

MR. HOLDER: I'm s--

THE COURT: Or RFA 5?

MR. HOLDER: It's request five under the heading R -- request for admission, I'm --

THE COURT: Okay. All right.

MR. HOLDER: The, the reason I asked this specific set of request for admissions three was I, I generally in, in a few motions, I believe that the record title was conceded and that I knew it was going to be an adverse repossession case of parcel three. And the only interrogatory answer I had was that since the Plaintiff owned the property he was diligent about posting no trespassing signs. I've since conducted twelve depositions of which the Plaintiff hasn't attended and have, have yet to find any fact witnesses who said they saw a no trespassing sign in the area. So that's the purpose --

THE COURT: Well some of these things you're just going to have to prove at trial.

MR. HOLDER: Sure. Oh, I -

THE COURT: If he claims he's putting up no trespassing signs and you got a dozen people who are out there and have never seen one, that's - isn't that a factual determination?

Hold on. Let me - I found your --

MR. HOLDER: Yes, it is.

THE COURT: -- request. Let me read this.

All right. I, I have -- I, I'm reading your request for admission number five - admit that the acts

was of such a decisive character to amount to objective manifestation of intent to abandon all claims to any rights whatsoever without any regard to time whatsoever.

I, I agree. That's a legal conclusion. That's what you're --

MR. HOLDER: That's actually request for admission two you're reading.

THE COURT: Actually I'm reading five.

MR. PEMBROKE: That's the correct, that's the correct request.

THE COURT: Two is something about between '75 and '83 - the tracks were moved.

MR. HOLDER: Tha-- I'm sorry. You're on request for admission number two. I, I sent three separate request for admissions --

THE COURT: Yeah, that might be part of the problem.

MR. HOLDER: Yeah, and I, I apologize. I, I'm not as organized as I wish I was, Your Honor. I, I apologize.

THE COURT: Do you have a -- I want to see your -- I want to see the request for admission number five that's in question --

MR. HOLDER: That's going to be --

THE COURT: -- I want to see the language. Do you have it in writing?

MR. HOLDER: I do. It's exhibit two right here.

THE COURT: Well I -- what do you mean right here? Do you have it in paper?

MR. HOLDER: I do, I do not.

THE COURT: Mr. Pembroke, do you got a piece of paper?

MR. PEMBROKE: I, I do. I only have one copy, but I'll be happy to share it or I can read it to you.

THE COURT: Why don't you read it to me. Let's get it on the record.

MR. PEMBROKE: Request number five. Admit that the act of removing the bridges, filing the ICC abandonment, coupled with cessation of use of said right of way over and through lands condemned in 1866 was of such a decisive character to amount to objective manifestation of intent to abandon all claims to any rights whatsoever without any regard to time whatsoever.

THE COURT: All right. I think that's the one I had. Mr. Holder, you don't think that's it; do you?

MR. HOLDER: That's, that's -- I have, I have it right here.

THE COURT: All right. Read it to me.

MR. HOLDER: Admit that Justin Holder by deed located at Liber 6414, folio 219 and sequence of the Washington County Land Records is the record title holder

to lands contained in the triangle and is seized in those lands described as the triangle. And I -- in the definitions I described by metes and bounds what the triangle is.

THE COURT: So you want him to admit that he's the record title holder?

MR. HOLDER: That, that I, that I am the record title holder.

THE COURT: That you're the record title holder.

MR. HOLDER: Of those lands which are outside the metes and bounds of parcel three of this complaint.

As far as Mr. Young's title deeds. But as far as my title deeds, they're inside the metes the bounds is my title deeds. There's, there's a --

THE COURT: Well let me ask you this. I assume he, he disagrees with you on that.

MR. HOLDER: I, I don't know. He didn't answer.

THE COURT: Mr. Pembroke, does that question sound familiar? And was there an an-- what was the answer he received?

MR. PEMBROKE: The answer was - unable to provide an answer at this time; will supplement promptly. And the reason for that is I don't know, and my client doesn't know what quote the triangle is.

The, the question is -- it says - admit that

Justin Holder by deed such and such is the record title holder of lands contained in quote the triangle end quote, and is seized of those lands described as quote the triangle. But we don't know what the triangle is.

So it's not, it's not simply a matter of admitting or denying. Unless there's further clarification, we're unable to answer. We don't know.

THE COURT: All right. Mr. Holder, you indicated that the, the request had a metes and bounds description. Does it have a metes and bounds description of that triangle?

MR. HOLDER: Yes.

THE COURT: And is it a metes and bounds description of just that triangle?

MR. HOLDER: Yes.

THE COURT: All right. Well look, if the answer was - unable to admit or deny at this time, I'm guessing it's because they're not sure what you're talking about.

Mr. Pembroke, I assume you've got a title attorney involved in this?

MR. PEMBROKE: Yes, Your Honor.

THE COURT: All right. Survey -- or surveyor perhaps, I don't know.

MR. HOLDER: I could --

MR. PEMBROKE: Well I mean --

MR. HOLDER: -- if I can read the des-- definition to you, you --

MR. PEMBROKE: But Your Honor, the point is that with respect to the admission itself, the triangle is not identified.

THE COURT: All right. Okay. Mr. Holder, do you agree that the triangle is not identified in your request for admissions?

MR. HOLDER: I, I do not. I have the request for admission right in front of me.

THE COURT: Well you just read it to me; right?

MR. HOLDER: I, I, I had the term of definitions up top. I defined the triangle up top.

THE COURT: All right. Let me hear what the --

MR. HOLDER: And then I asked several questions.

THE COURT: -- let me hear what the definition of the triangle is.

MR. HOLDER: The term - the triangle - refers to the parcel of land that is located to the north of parcel three as described in the complaint that is a matter of this action with the following metes and bounds description. Beginning at a stone found, said stone at the beginning of the line where --

THE COURT: Well you can -- okay. You can just go to the end of the metes and bounds description. You

don't have to read all of that to me.

MR. HOLDER: Okay. Deed from Roy G. Reeder and recorded in Liber 230, 139 of the Land Records. Thence with the twelfth line twenty-four degrees west binding on lands of Jeffrey Young, binding on the lands of, of Young south, binding on the lands of Christine Scott Morral, binding on the lands of Morral and east to a mag nail found in a large pile of rocks which is claimed to be the northeast corner of land of Morr-- Morral, and then to a straight point in the beginning.

So --

THE COURT: Well who's doing your title work for you?

MR. HOLDER: This guy.

THE COURT: You are?

MR. HOLDER: Yes, sir.

THE COURT: You going to be able to qualify yourself as an expert at trial?

MR. HOLDER: I spent eight hundred hours in it. I'm going to attempt to.

THE COURT: What kind of training did you have before you started spending eight hundred hours?

MR. HOLDER: I was an auto mechanic.

THE COURT: An auto mechanic?

MR. HOLDER: Yes, sir.

THE COURT: (Sighs.)

MR. HOLDER: I mean if Mr. --

THE COURT: All right. Well look this is, this is just by way of advice, but I don't know if you're -- I don't know what weight anybody's going to give your opinion of title if you're not a title abstractor, a surveyor, a title attorney, or something like that. You might want to consider that.

MR. HOLDER: I, I would like to. I, I need to know what -- that comes to the expert designation. I need to know what his experts are going to say so I can go hire an expert if I need one. I need to be able to tell the experts -- you know, I can't just go say - hey, I need the title opinion for three hundred years. And spend --

THE COURT: Well --

MR. HOLDER: -- hundreds of thousands of dollars.

THE COURT: -- you seem to, you seem to have already given yourself a title opinion about this triangle. That might be something that an expert can back you up on.

That -- look, that's just in the way of advice. I don't -- you know, you can try your case or defend your case however you want to defend it. Uh --

MR. HOLDER: Well I guess I, I guess I -- Fox and Associates did a tit-- full title search back to March 15th of 1792 and provided survey work and an expert

opinion.

THE COURT: Wait a minute. 1792?

MR. HOLDER: 1792, sir. The re-survey (unintelligible) --

THE COURT: Well who's, who's the witness who's going to come in on that?

MR. HOLDER: George Nagle.

THE COURT: All right. How old is he?

MR. HOLDER: Well he's --

THE COURT: All right. Let me think about this a little bit.

Listen, the response was - he hasn't been able to answer.

MR. HOLDER: I think he, I think -- see, I think Mr. Pembroke's working off the June responses. And he sent some other -- he sent another set of responses that, that were more -- he did -- we, we talked and he did revise the responses. And I think he changed it to neither admitted or denied - calls for a legal conclusion on that one.

THE COURT: Okay. Well if that's the final response, I think he's absolutely right. It calls for a legal conclusion. What you're asking is for Mr. Young to respond to these - admit or deny. These should be facts. And you've asked for - who's in title to the triangle?

And I haven't heard that Mr. Young's going to opine as to who's in title. Or that he's the designated expert. So your request to compel on that one is denied.

What's the next point?

MR. HOLDER: Uh, you know, I'm, I'm not going to waste any more of the Court's time. I see the way the wind's blowing so I appreciate --

THE COURT: Well listen, I'll consider them point by point. You might have one in there.

MR. HOLDER: No --

THE COURT: Listen. I get attorneys all the time that blow smoke up my skirt. And every once in a while they got a, a, an argument that's right and I'll give it to them. But -- so don't just throw in the towel if you don't want to.

MR. HOLDER: No. I mean you, you said that I'm, I'm not going to be precluded at trial from any of this stuff. And I want to continue to work in good faith. You know, and hopefully we can just maybe try to get some, some stuff resolved so that we don't have such a large trial, you know, on the Court's docket. And, and I'll just --

THE COURT: All right. So you want to withdraw the, the motion to compel at this point for the remaining items that have not been ruled on?

MR. HOLDER: Yes, sir. Ye-- yes, Your Honor.

THE COURT: You sure you want to do that?

MR. HOLDER: I do. I want to withdraw the rest of --

THE COURT: All right. And you understand you don't have to. We still got twenty-five minutes left.

MR. HOLDER: No, I, I respect the Court's time. I'm not going to --

THE COURT: All right.

MR. HOLDER: -- (unintelligible).

THE COURT: That's fine. I assume there's no objection.

MR. PEMBROKE: No, Your Honor.

THE COURT: The remainder of the points raised in the motion to compel are then withdrawn by the Defendant.

It just -- yeah, keep in mind that these -- I've got exhibits up here, Mr. Reynolds. We'll give these back to -- because those weren't considered.

But -- are we set for three days?

MR. PEMBROKE: Yes, sir.

THE COURT: All right. I think that's --

MR. PEMBROKE: In June, I believe.

THE COURT: It's me?

MR. PEMBROKE: Pardon?

THE COURT: It's me?

MR. PEMBROKE: Oh, I don't know. I said in June.

THE COURT: Oh, in June. I thought you said it was you. Okay.

MR. PEMBROKE: No, I don't know who the, who the judge is.

THE COURT: Well I'm the one with the title expertise, so it might be me.

All right. Anything further?

MR. HOLDER: Well you said three days, but then that's what Judge Dwyer ordered at the scheduling conference. And then your order changed it to two days.

THE COURT: I think I modified that because --

MR. HOLDER: I'd asked for a jury trial.

THE COURT: You're right. I denied that. I don't believe you have a right to a jury trial. I know you've taken that down to Annapolis. That's fine.

MR. PEMBROKE: Well not that issue.

MR. HOLDER: I, I don't know that that issue is before the court in Annapolis.

THE COURT: Oh, all right. Okay. So what are you telling me? We're -- are we at two days or three?

MR. HOLDER: I, I'd like to be at three days. I -- I mean I think that --

THE COURT: I think we were at three.

MR. HOLDER: -- adverse possession is --

THE COURT: I think it -- has been brought to my attention that we might still need three. And so I think it's three.

MR. HOLDER: Okay.

THE COURT: Even though my order indicated two, I'm pretty sure it's still on for three.

MR. HOLDER: I think it's going to be a fact intensive query, so.

THE COURT: Yeah. I mean it does, it does sound like it's going to be, you know, a long, a long trial. And I guess I -- just so you know, I did that as sort of a knee jerk reaction. When I see a three day jury trial, and the jury part's coming out --

MR. HOLDER: Sure.

THE COURT: -- I'm thinking - all right, we're not going to need time, you know, all this time to pick a jury and that sort of thing. So I knocked it down to two, trying to be efficient with the Court's time, but there's a lot of material here so it's -- I think it's back at three days. You can confirm that with the Assignment Office.

MR. HOLDER: Okay.

THE COURT: All right. Anything further pending before the Court?

MR. HOLDER: No, thank you for your time.

MR. PEMBROKE: No, Your Honor.

THE COURT: All right. I believe all of the open motions in this case are now ruled on.

We're in recess.

(At 10:08 A.M. this matter concluded.)

oOo

I hereby certify that I reported verbatim by electronic device the proceedings in the matter of *Young v. Holder*, Case No. C-21-CV-20-317, in the Circuit Court for Washington County, Maryland, on October 15, 2021, before the Honorable Mark K. Boyer, Judge.

I further certify that the proceedings were transcribed by me to the best of my ability in a complete and accurate manner, and page numbers 1 through 30 constitute the official transcript of the proceedings.

In witness whereof, I have affixed my signature this 24th day of March, 2022.

Debra M. Kline
Court Reporter

OoO

IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

JEFFREY YOUNG	*	
Plaintiff	*	
v.	*	**CASE NO. C-21-CV-20-371**
JUSTIN HOLDER, et al.	*	
Defendants	*	

TRANSCRIPT OF PROCEEDINGS

(Jack Steich's Motion to Quash Subpoena)

Circuit Court

Hagerstown, MD

March 11, 2022 at 2:01 P.M.

Before:

The Honorable Andrew F. Wilkinson

Appearances:

Jack Edward Steich, pro se; Plaintiff

Justin Holder, pro se; Defendant.

Transcribed from electronic recording by:

Linde M. Cessna, Court Reporter

Circuit Court for Washington County, Maryland

The Court House

Hagerstown, Maryland 21740

240-313-2564

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P R O C E E D I N G S

(Motion to Quash Subpoena Jack Steich)

THE COURT: Okay, we're back on the record for C-21-CV-20-371. This is the matter of *Jeffrey Young versus Justin Holder, et al*. And now we are on to Mr. Stiech's Motion to Quash the Subpoena that was served on him for purposes of the deposition. Mr. Steich, do you wish to be heard? It's your motion.

MR. STEICH: Yes, I'm sure you're aware of the facts. It's a compliant to quiet title - -

THE COURT: Yes.

MR. STEICH: - - filed by Mr. Young. I don't know Mr. Young. I haven't been asked to do any work on behalf of him. Um, I'm not a party to the suit. I wasn't asked by Mr. Holder when the suit was initiated in September to do any work for it. I have no reference to the facts of the case whether I can prove or disapprove what Mr. Young wants to attain. It seems to be going - - The issue with Mr. Holder and I seems to be going to the issue of a wagon road and whether this wagon road crosses, I would think, this property that's in question. And he refers to my work that I did and he was aware of the work that I

did for Mr. Kuczynski in the town of Keedysville several months prior to September. And he's claiming that I found out the origin and the status and of this wagon road. And as I stated in my motion and my reply to Mr. Holder and the Court that I don't know how many times I have to say it I do not know the location of this wagon road but yet he insists that I do. I don't know how many times I have to say it. If he has evidence that I do I'd like to see it because I do not remember or recall a wagon road. This wagon road came up, I don't know if it came up in previous hearings, it may appear in previous deed on property that he owns not adjacent to the Young property. And doing the work for the town of Keedysville there is a, someone was cutting trees down in a forestation area. And Keedysville called and said - -

THE COURT: In a forest what?

MR. STEICH: I'm sorry?

THE COURT: In a forest what?

MR. STEICH: Forestation area.

THE COURT: Okay.

MR. STEICH: Stormwater management area. And the town wanted to know, you know, what's going on. What's going on with this retention area. And I've pulled the plat and it's very clear and I've never seen it before, there is an eight-foot right of way that goes through

this forestation area, which does not, it's, it's not adjacent to the Young property. And I reported back to Mr. Kuczynski in the town that, yeah, there is a right of way that goes through it, but - -

THE COURT: Eight foot.

MR. STEICH: - - I don't know - - And they want to know is this, is this the wagon road. And I said well how do I know if it's the wagon road or not. I don't know. Uh, so this must be the problem that is not getting through.

THE COURT: Okay. So, you found a plat that showed an eight-foot easement through the forestation area?

MR. STEICH: That the town of Keedysville owns. But it's not related to the Young property.

THE COURT: I understand. Is it north of the Young property?

MR. STEICH: North and east I would think.

THE COURT: Is it next to the Stonecrest Development?

MR. STEICH: I believe so, yes, it's part of that.

THE COURT: Okay.

MR. STEICH: In the report - -

THE COURT: But you never opined yes this is the wagon road?

MR. STEICH: No, I did not opine to that. And actually, the report that I - -

THE COURT: And that eight-foot easement is shown on the plat?

MR. STEICH: Yes, I have a copy of it if you'd like to see it.

THE COURT: I would. Do you mind showing it to Mr. Holder? He's probably seen it but I've probably seen it, I just don't - -

MR. STEICH: And the Young property is down here.

MR. HOLDER: Yea, I'm familiar.

MR. STEICH: The Young property is the very, is at the very bottom of the - -

THE COURT: Yes.

MR. STEICH: But after, this was back in around Memorial Day of 2020, and after I looked at what I wrote to Mr. Kuczynski it basically didn't say anything and therefore I didn't even charge for the, it was a bunch of blurbs that I gave, you know.

THE COURT: And so, the easement you noted is what you highlighted in yellow?

MR. STEICH: Yes. Apparently there's some trees were being cut in that area and the town of Keedysville wanted to know what was going on.

THE COURT: Okay. And is that Antietam Drive, Antietam Street or it's just - -

MR. STEICH: Coming down from the north.

THE COURT: I'll ask him when we get to him but this is what you found.

MR. STEICH: Um hum.

THE COURT: You provided this to Mr. Kuczynski?

MR. STEICH: Correct.

THE COURT: I don't know what it is it's just there.

MR. STEICH: Right, yea, and the question was is this the wagon road and I said well I don't know.

THE COURT: I don't know.

MR. STEICH: Yea.

THE COURT: Okay.

MR. STEICH: But as you can see it's not related to the Young property.

THE COURT: Let me keep it for now. I hear you, okay.

MR. STEICH: And again, in his response to my, he says that I have supplied some reports to him. If he as them I'd like to see them. I can't find them amongst my records.

THE COURT: Or that you had provided to Mr. Greivell - -

MR. STEICH: Correct, yes.

THE COURT: Your petition says you don't remember doing it. You can't find them in your documents.

MR. STEICH: Exactly, yes.

THE COURT: Okay. And so, essentially your deposition is a waste of time is what you're saying?

MR. STEICH: That's what I was trying to, in so many words, yes. I didn't want to waste going down. I was trying to avoid this.

THE COURT: Okay.

MR. STEICH: Okay, let me hear from Mr. Holder. Mr. Holder, what would you like to tell me, sir?

MR. HOLDER: Uh, yes, thank you, Your Honor. I think I was very candid in my motions that, you know, me and Mr. Steich and Mr. Kuczynski really worked really hard to try to get some type of resolution that we didn't have to do all this.

THE COURT: Okay.

MR. HOLDER: If you notice in my sur-reply I asked four questions to Mr. Steich. If he should say no, you know, there's no, he doesn't know if it burdens the town of Keedysville.

THE COURT: What does?

MR. HOLDER: In the report that you determine the wagon road did not burden property claimed by the town of Keedysville known as stormwater management 2 on plat, 8292 of the Stonecrest subdivision.

THE COURT: Let me stop you here.

MR. HOLDER: Yes, sir.

THE COURT: I don't know that we're going to have him answer those questions today because he's not on the stand. He's not under oath.

MR. HOLDER: Correct.

THE COURT: And this is not a deposition, got it?

MR. HOLDER: Yes.

THE COURT: In your question are you suggesting that this highlighted easement is the wagon road?

MR. HOLDER: I'm not suggesting that at all.

THE COURT: But your question does, I think. Read your question again.

MR. HOLDER: In the report did you determine the wagon road did not burden property claimed by the town of Keedysville known as stormwater management 2 on plat 8292 of the Stonecrest subdivision?

THE COURT: Okay, I understand. I understand that question.

MR. HOLDER: So, when I say wagon road I mean the express easement granted to Deena Holder and Uncle Eddies with metes and bounds course and distances description. That may be something that got granted along or conveyed along with as you said a dedication of a plat. If there was a public road that went it could have also been extinguished so that now the plat didn't extinguish but all the public roads, uh - -

THE COURT: From what I understood we talked about before your belief was that the wagon road however it is described ran essentially north to south down the railroad line.

MR. HOLDER: That's what George Forelife where I've declared him an expert in this question for DNR testified to, yes.

THE COURT: Okay.

MR. HOLDER: And so, the question is going to be are we going to come into trial and rely on all this evidence from plat 8292 when Mr. Young is claiming his case is totally irrelevant to plat 8292 and if so what witnesses do I need to bring, how do I prepare and who's he going to call and rely on and what material evidence does Mr. Steich have that's not privileged.

THE COURT: Has he listed Mr. Steich as an expert witness?

MR. HOLDER: He has not but he listed two, he listed two county, county employees and he listed Mr. Joliet - -

THE COURT: Okay.

MR. HOLDER: - - who relied on.

THE COURT: Fair. Did he list Mr. Steich as an expert witness?

MR. HOLDER: No, he did not, he did not.

THE COURT: Okay.

MR. HOLDER: And I guess the only other, you know, factual evidence I had is Mr. Greivell provided - - Did you see the affidavit Mr. Greivell had provided?

THE COURT: You can give it to me.

MR. HOLDER: Is it alright if I give this - -

MR. STEICH: Sure, I have - - I just note that I haven't received it.

THE COURT: Well, hang on. Hang on Mr. Steich. Let me look at it and then we'll talk about it.

MR. STEICH: Okay.

THE COURT: What is 28 Antietam Drive?

MR. HOLDER: That is Deena Holder's property.

THE COURT: Property.

MR. HOLDER: Yes, sir. Yes, Your Honor.

THE COURT: Okay.

MR. HOLDER: And I'll proffer to you that because I served Mr. Steich by mail he didn't receive that. I handed it to him before the hearing and he does have an objection. I think it dispute at number 13, is that specifically - -

THE COURT: We'll talk about it. We'll talk about it. Why don't you finish what you wanted to say and then I'm going to talk to Mr. Steich about number 13.

MR. HOLDER: You know ,I really think that this is just this is a very narrow issue. Again, it's just if

we're going to rely on the fact that plat 8292 abandon rights his opinion is very relevant to how that's been made, if he's made a report, if it's changed the town of Keedysville's position. There's positions in the public record that they've taken at the town of Keedysville such that they're not responsible for what's on plats. That they're, you know, that it was negligence. That it's up to the surveyor and the engineer that does it. That they just sign them. They don't have any intent. I mean I have that in the public record, so I just think that Mr. Steich, this is why I pursued the deposition.

THE COURT: Fair.

MR. HOLDER: That's all I have.

THE COURT: Okay. So that I understand, Mr. Steich, you've not been hired by Mr. Young?

MR. STEICH: No. I've done thousands of reports over the years and I don't think I've ever even done the property itself.

THE COURT: Okay.

MR. STEICH: I may have done Stonecrest but not the Young property at all.

THE COURT: You've not - - The limitation on your work for the town of Keedysville led to you finding this plat?

MR. STEICH: Correct, yes.

THE COURT: Plat 8293 which is the second page of 8292?

MR. STEICH: Correct.

THE COURT: And your response, if you had one, to Mr. Kuczynski was all I see is a 8-foot or 10-foot-wide easement. That's it.

MR. STEICH: Yea, among other things and specifically I can't state for certain - -

THE COURT: I can't tell you whether that's the wagon road.

MR STEICH: That is correct.

THE COURT: Okay. And then according to Mr. Greivell's affidavit, do you have it?

MR. STEICH: No, I do not.

THE COURT: Okay, but you had a concern about number 13?

MR. STEICH: Yes, he, I believe he claimed that I, I spoke to him with certainty that I knew where the location of the wagon road is and I don't know if where that came from. I do not know with certainty where that is.

THE COURT: Okay.

MR. STEICH: Other than fact, like I said, this wagon road is referenced in a deed to a property on the other side of the old railroad. And it may have a metes and

bounds description on it. But I never platted it out. I don't know where it goes. I don't even know if it's related at all to that far station area.

THE COURT: Well, for Mr. Greivell's affidavit it seems that he had asked you to run a chain on title for Deena Holder's property, which is on the other side of the railroad track.

MR. STEICH: Several months prior to, yes.

THE COURT: And to specifically to see how far it went down, you know, the predecessors and title where, where their property lines were with respect to the Antietam Creek.

MR. STEICH: Yeah, it was approached to me from what I remember there was a dispute on the property lines for someone, ran to the center of the creek. Well, every time the creek has changed he wanted me to chain back whether the, the adjoining properties matched. Didn't say anything about a wagon road or anything. And from what I remember I did it. I don't know what the report was that I gave. I may have given - -

THE COURT: Do you have that report?

MR. HOLDER: I do.

THE COURT: Okay, so you have that report.

MR. STEICH: I'd like to see it please.

THE COURT: Then it goes on to that Mr. Holder

requested some other things and I think Mr. Holder probably asked Mr. Greivell, hey, let's start talking to Mr. Steich about the wagon road, which you've now indicated you don't believe you did that work on behalf of Mr. Holder, you may have done some work on behalf of the town, which got you to plat 8293.

MR. STEICH: Yes.

THE COURT: Which you don't know whether that is or is not the wagon road, you have no idea?

MR. STEICH: That is correct.

THE COURT: Did you not compare it to whatever metes and bounds there might be in some other deed.

MR. STEICH: That's correct.

THE COURT: Okay. Alright, so let me go back to you Mr. Holder. Why do you need Mr. Steich's deposition?

MR. HOLDER: Given his proffer today I wouldn't but given the factual evidence I've entered into the record and informed of an affidavit he does have material evidence and until I put him up on that witness stand to hear it I don't know that we can take what he's saying -- I mean, he's a very nice man. I just sometimes you have to get somebody on the witness stand to get - -

THE COURT: What factual evidence do you think you have that we haven't already discussed today?

MR. HOLDER: Specifically, in number 13.

THE COURT: Right.

MR. HOLDER: If he says that the wagon road would be superior to the forest conservation and stormwater that would be - -

THE COURT: That's not what number 13 says.

MR. HOLDER: Okay.

THE COURT: Absolutely not what number 13 says. Do you want to know what I think it said?

MR. HOLDER: What do you think it says?

THE COURT: I think he looked at this. He saw the highlighted yellow and he told Adam Greivell, hey there's a 10-foot to 8-foot easement on the property that is owned by the town that was clearly there before this became town property, became the forest conservation easement.

MR. HOLDER: Okay.

THE COURT: That's what number 13 means.

MR. HOLDER: Okay, well, I mean if that's the case there's really not a lot - -

THE COURT: Now, if you want me to put him on the witness stand I'll ask him those questions.

MR. HOLDER: He seems like an honest man. I'm not trying - -

THE COURT: Here's what Greivell says. Mr. Steich candidly advised me, however, during the conversation

that he had little difficultly confirming the right of way and that it burdened land now belonging to the tow of Keedysville.

MR. HOLDER: Okay.

THE COURT: Not the wagon road.

MR. HOLDER: Okay.

THE COURT: It predated the forest conservation easement. Here's the forest conservation easement. Grated to Washington County over the same land such that the forest conservation easement would likely be inferior to the wagon road right of way. If that's the wagon road right of way.

MR. HOLDER: So basically, it was a misunderstanding between - -

THE COURT: Or, and, it predated, this easement, predated the storm water management easement areas depicted on Stonecrest 8292, such that they overlapping stormwater management easement likely would be inferior to the wagon road right of way, if that's the wagon road. If this is the wagon road.

MR. HOLDER: Correct, okay.

THE COURT: So, I'm asking you. Is that the wagon road?

MR. HOLDER: By metes and bounds and my personal knowledge of surveying, that is not the wagon road.

THE COURT: Exactly. Because the wagon road runs this way up and down the railroad.

MR. HOLDER: Correct. So, it was probably a misunderstanding.

THE COURT: Okay. Okay. If it was a misunderstanding are you willing to - - Maybe a misunderstanding between Mr. Steich and Mr. Greivell, right?

MR. HOLDER: Probably.

THE COURT: Okay. That then gets to you and you're thinking Steich is saying he knows where the wagon road is. Okay.

MR. HOLDER: Yes, just because I'm blind copying people doesn't mean they're responding.

THE COURT: That's fair. Do you understand?

MR. HOLDER: I do.

THE COURT: Okay. In order for you to feel more comfortable with it, would you like me to put Mr. Steich on the stand and ask him, under oath, does he know where the wagon road is?

MR. HOLDER: If we could - - Would that be okay - -

MR. STEICH: I'll be glad to go up there.

THE COURT: Come on take the witness stand Mr. Steich.

MR. STEICH: Thank you.

THE COURT: Have a seat Mr. Holder. Have that marked as 1.

(Court exhibit 1 was marked for identification and admitted into evidence)

TESTIMONY OF JACK EDWARD STEICH

Jack Edward Steich, having been duly sworn, did testify as follows:

DIRECT EXAMINATION

By the Court:

Q. Sir, will you state your full name?

A. Jack Edward Steich.

Q. And what is your business address?

A. 11913 Cheryl Drive, Hagerstown, Maryland 21742.

Q. What do you do for a living?

A. I search titles to real estate.

Q. How long have you been doing that?

A. My business since 1994 and eight years prior to that at a law firm.

Q. Is it fair to say that your practice is currently primarily in Washington County, Maryland?

A. 99 percent of it.

Q. Okay. I want to hand to you what I've marked as exhibit number 1. Okay. I'm also going to hand to you -

- May I have this marked. Would you agree that exhibit number 1 is Plat 89 - - What is it?

A. 8293.

MR. HOLDER: I agree, Your Honor, yes.

Q. And that's from the plat records of Washington County, Maryland?

A. Correct.

Q. And you know how the plat records of Washington County, Maryland work? You know how that system works?

A. Certainly.

Q. Okay. You'll note on their highlighted portion, which appears to be maybe and 8 foot or 10-foot right of way?

A. I do.

Q. Whose property does that go through?

A. According to my research it was, it's currently owned by the town of Keedysville.

Q. Okay. Would you look at exhibit number 2, that I provided you. That's an affidavit of Adam Greivell, an attorney here in Hagerstown concerning this matter?

(Court's exhibit 1 was marked for identification and admitted into evidence.)

A. Yes.

Q. And would you look at paragraph number 13?

A. Yes.

Q. And would you agree that paragraph number 13 concerns a conversation that you and Mr. Greivell had at some point in time concerning your work on this area of land?

A. I agree with that statement.

Q. Okay, can you explain to me what Mr. Greivell's statements mean in comparison to what you believe you told Mr. Greivell?

A. I believe he misunderstood what I was trying - - When I spoke with him on the phone, I believe it was a phone conversation, we were talking very candidly as he, Mr. Greivell said, and I said that clearly on this plat there is a right of way that goes through this conservation area. It's eight foot wide. It's shown on this plat. But I - -

Q. Do you believe that - - Have you ever researched the wagon road as it is called in this case?

A. No, I have not.

Q. Were you opining to Mr. Greivell during that phone conversation that the highlighted portion on Exhibit number 1 was the wagon road?

A. I was not doing that, no.

Q. Do you know where the wagon road is?

A. I do not know.

END OF DIRECT EXAMINATION BY THE COURT

THE COURT: Do you have any specific questions for Mr. Steich, Mr. Holder?

MR. HOLDER: No, well - -

THE COURT: no.

MR. HOLDER: Well, is three hundred dollars and hour for today enough to compensate you for your time, sir?

THE COURT: No, this is his motion. He doesn't get paid today. Sorry.

MR. HOLDER: He's getting paid.

THE COURT: No, you're not getting paid. He is - - He filed a motion to be here and I'm not going to have people getting paid in order to file motions to quash subpoenas.

MR. HOLDER: It was my misunderstanding.

THE COURT: It's okay. That's it.

END OF TESTIMONY OF JACK EDWARD STEICH

THE COURT: Okay, Mr. Holder, anything else you want to tell me?

MR. HOLDER: No, Your Honor.

THE COURT: Okay. Alright, having heard the testimony of Mr. Steich I find that Mr. Steich in the work that he had done in this area of Keedysville did not lead him to an opinion as to where the location of the wagon road is. Any indication that Mr. Greivell's

affidavit particularly paragraph 13 that Mr. Steich determined where the wagon road is simply a misunderstanding between Mr. Steich and Mr. Greivell. Probably because it was over the phone. I don't know that they were both looking at the same piece of paper at the same time. And therefore, he has not been identified as an expert witness in this case and therefore I believe his deposition would be unnecessary. And I believe it would be unduly burdensome to Mr. Steich and the Motion to Quash is granted.

MR. HOLDER: I agree.

THE COURT: Okay, alright.

MR. STEICH: Thank you.

THE COURT: Thank you Mr. Steich, thank you for coming a little early. Alright, Mr. Holder, that's all for today.

MR. HOLDER: Thank you very much for your time.

THE COURT: Yes, sir.

END OF PROCEEDINGS AT 2:24 P.M.

DIGITALLY SIGNED CERTIFICATE

I HEREBY CERTIFY that I reported verbatim by electronic device the proceedings in the matter of, *Jeffrey Young v. Justin Holder, et al.,* Case No. C-21-CV-20-371 in the Circuit Court for Washington County, on March 11, 2022, before the Honorable Andrew F. Wilkinson, Judge.

I further certify that the proceedings were transcribed by me to the best of my ability in a complete and accurate manner, and page numbers 1 through 23 constitute the official transcript of the proceedings.

In witness whereof, I have affixed my signature this 6th day of April, 2022.

Linde M. Cessna

Linde M. Cessna
Court Reporter

IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

JEFFREY YOUNG

Plaintiff

v.

JUSTIN HOLDER, *et al.*

Defendants

CASE NO. C-21-CV-20-000371

AFFIDAVIT OF ADAM GREIVELL

1. I am an adult resident of the State of Maryland and am competent to testify.
2. I am an attorney authorized to practice law in the State of Maryland since 2005.
3. On January 28, 2020, on behalf of my client, Justin Holder, I called Jack Steich and requested that he perform a title search for a property that was then known as 28 Antietam Drive, Keedysville, MD, tax parcel 127 (the "Keedysville Property").
4. I followed up with an email that same day, specifically stating: "I'd like to find the descriptions going back as far as the records will take us that describe that boundary line for both sides of the property. My suspicion is that at some time in the past, the boundary was described as the edge or center of the creek."
5. On March 4, 2020, Mr. Steich emailed me back with a title abstract, stating: "Attached is the chain of title for the Deena Holder property together with deed WMcKK6/363 which I traced back to 1872."

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6. On April 27, 2020, I had a phone call with Mr. Steich discussing Mr. Holder's needs for further title work related to the Keedysville Property.

7. On April 29, 2020, I emailed Mr. Steich, forwarding the specific items that Mr. Holder desired to have researched by Mr. Steich, stating: "Below are comments from Mr. Holder regarding what we need to have researched to the best of your ability."

8. Contained in the "comments from Mr. Holder," was the statement that "not[e] both cost kretzer deeds in 1874 for parcel 127 and 412 include the wagon trail right away [*sic*] in them."

9. Approximately two months later, in July, 2020, I was retained to represent Justin Holder regarding several peace order matters[1] which were all set to be heard for a temporary peace order hearing on July 16, 2020 and a final hearing on July 23, 2020. The final hearing was eventually rescheduled for July 31, 2020.

10. After the temporary hearing and before the final hearing, I called Mr. Steich on July 20, 2020, to discuss hiring Mr. Steich to prepare a title report on the "wagon trail" right of way that benefitted the Keedysville Property.

11. Mr. Steich and I spoke for approximately thirty minutes.

12. Mr. Steich advised that he was not comfortable being hired by Mr. Holder to perform work related to the right of way because he had recently been asked by the Town of Keedysville to research the right of way, and he perceived there could be a conflict of interest.

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[1] Christine Morral, Scott Morral and Jeffrey Young had each filed separate peace order petitions against Justin Holder, and Justin Holder had filed separate peace order petitions against each of them, resulting in six total peace order cases.

13. Mr. Steich candidly advised me, however, during that conversation that he had little difficulty confirming the right of way and that it (a) burdened land now belonging to the Town of Keedysville, (b) pre-dated the forest conservation easement granted to Washington County over the same land such that the forest conservation easement would likely be inferior to the wagon road right of way, and (c) pre-dated the stormwater management easement areas depicted on the Stonecrest Development Plat 8292, *et seq.*, such that the overlapping stormwater management easements would likely be inferior to the wagon road right of way.

14. At no time during this conversation did Mr. Steich state to me that the information he disclosed to me as reported in the preceding paragraph were protected by any privilege.

15. On February 23, 2021, Mr. Steich emailed me, stating: "I pulled my file on Kuczynski/ Keedysville today. I do not have a written request or e-mail from Ed asking me to perform work on the project. However, I remember receiving a phone call from Ed late on the Friday before the Memorial Day weekend (5/29/20) giving me very general info. and requesting I meet him in his office on the Tuesday after the holiday (6/2/20) to receive specific instructions. My report to Ed is dated 6/15/20."

I solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of the foregoing paper are true.

Adam D. Greivell, Esq.

3/9/2022
Date

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IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

JEFFREY YOUNG *

Plaintiff *

v. * **CASE NO. C-21-CV-20-371**

JUSTIN HOLDER, et al. *

Defendants *

TRANSCRIPT OF PROCEEDINGS

(Pre-trial Discussion)

Circuit Court

Hagerstown, MD

June 6, 2022 at 1:32 P.M.

Before:

The Honorable Andrew F. Wilkinson

Appearances:

R. David Pembroke, Esquire, attorney for Jeffrey Young, Plaintiff; and

Robert Kline, Esquire, attorney for Uncle Eddie's Broken Down Palace, Defendant; and

Justin Holder, pro se; Defendant.

Transcribed from electronic recording by:

Linde M. Cessna, Court Reporter

Circuit Court for Washington County, Maryland

The Court House

Hagerstown, Maryland 21740

P R O C E E D I N G S

THE COURT: Everybody have a seat. Are we expecting Ms. Peeples?

MR. HOLDER: She texted me and said she couldn't make it. She had a prior hearing in Baltimore.

THE COURT: When did she text you that? Today?

MR. HOLDER: Today about 10:00 a.m.

THE COURT: Did we receive any notice that she wasn't going to be here, my office?

COURT REPORTER: No.

THE COURT: Did she call us?

COURT REPORTER: No.

MR. HOLDER: 9:30 a.m., sir.

THE COURT: Alright. Well, we're going to proceed without her. Okay, we're on the record for the matter of Jeffrey Young versus Justin Holder, et al. This is C-21-CV-23-71. Our purpose today is to have a discussion, sort of a pre-trial hearing type of discussion. It's a little bit different than the discussion that you may have had with Judge Long. That discussion with Judge Long is certainly a pre-trial hearing because he was not the judge handling the case for trial. He could have entertained settlement discussions if you had wished. My understanding is that there wasn't a resolution of the case. Pretty close in time or following that hearing

with Judge Long I received a letter from Mr. Holder, Justin Holder, dated May 23, 2022, sort of outlining what he felt were the four issues of greatest concern and then outlining a concern he had as to the number of days each of those issues would take. And then alerting the Court that he intended to serve fifty subpoenas for witnesses, some two hundred exhibits, etc., and I think asking that the case be considered for some form of bifurcation maybe to ease the issues, ease the requirement for certain witnesses and that sort of thing.

So, having read that letter, I put some thought into bifurcation. I didn't think it would be appropriate to do any sort of bifurcation unless we talked about it. I also thought about what issues could be limited and I thought about Mr. Holder's concerns about how many days this would take. So, I thought that we needed to get together to talk before we are together for what is scheduled as a three-day trial next, I'm sorry, two Tuesdays from now, I think. Correct. Okay.

Let's begin with number of days of trial. Mr. Holder, I understand that you are concerned about the breadth of the issues and whether we can really get the case done in three days. We're going to talk about the breadth of issues but I want you to know that I think this case was originally scheduled for two days. I moved

it to three because I did want to be sure that each party had sufficient time to get into evidence what they wanted to get into evidence. Recognizing then that this is a three-day trial, also recognizing that we need to take breaks, I've sort of done some quick calculations as to how much trial time you really get in a day. And I'm coming, if we move quick, starting at 9:00 and going until 4:30, we're talking possibly six hours of trial time each day. I'm going to allot one hour for opening and that is total, one hour for everybody. One hour for closing. So, if we have six hours of trial time over three days that's eighteen hours, one hour for opening, one hour for closing, that means there is sixteen hours of trial time left and I'm going to split that down the middle. Plaintiff is going to get eight hours of trial time. That is direct and cross-examination together. So, pre-plan. The Defendants all together, that is Mr. Holder, Justin, Deena Holder, is that the correct pronunciation? Deena. It's not Deanna, right?

MR. HOLDER: Yes. Correct.

THE COURT: Deena Holder and then I believe Uncle Eddie's is a party?

MR. KLINE: Yes, sir.

THE COURT: Represented by Mr. Kline. Those defendants all together eight hours, direct and cross,

divided how you please it between those defendants but the Defendants all total together are going to get eight hours. I will try to keep that time. I usually do it on my phone, sort of a timer on my phone. And I keep a separate legal pad to the side and I try to keep it as close as I can. I can't promise you that it's going to be exactly eight hours for each side. But I'm going, I'm going to try to keep you there and at the end of the day I'll try to tell you where you where you are as far as time so that you can pre-plan for the next day. As we get through witnesses if I think we're going too long on a witness I may hustle you. Okay. Mr. Holder, Mr. Kline and Mr. Pembroke understand what that means but I want you to understand there may be times during that trial I sort of stop them and say Mr. Holder I get what you're saying. Do you understand what I mean? That's my sort of signal to you that let's go. Do you understand?

MR. HOLDER: Yes, I was advised by a very good attorney how to examine a witness and make a record and if you're understanding the record that's all I would need is an acknowledgement.

THE COURT: With eight hours of total time for the Defense in total there may be times that it comes up in trial that I hustle you along a little bit more. Okay. And you may see me do it to Mr. Pembroke. You may see me

do it to Mr. Kline where I may say, Mr. Kline, I got it. And that's the signal. Okay. Maybe we ought to move onto a different issue so you're not wasting time on an issue that you've already presented sufficient evidence on.

MR HOLDER: (Unintelligable) because I respect the Court's time so.

THE COURT: Okay, so, that's eight hours each side. So, let's talk about what I believe is going to be relevant for this case and what I think is not relevant so that we don't have to waste time on things that are not relevant. And I'm looking at Mr. Holder's letter of May 23, because I think it's a nice encapsulation. I don't know if you all have that in front of you. And I'm looking at the first four items that he listed. Number one, whether private easements have been abandoned. Number two, whether there has been adverse possession on parcel 3. Number three, whether there is title to parcel 3 one way or another, probably based on the deeds and number four, whether there are claims or clouds that are out there regarding public roads on the property.

I'll tell you that I re-numbered those to make more sense to me.

MR. HOLDER: Okay.

THE COURT: Not to be critical but just to re-number

them for myself. So, I don't want to take them in order that he took them. But there are certainly some issues in those four that I think are at issue here. The Plaintiff's Complaint is to Quiet Title through Adverse Possession or by Deed and so Mr. Holder's number 2, that is adverse possession, that is absolutely at issue for our three-day trial. Mr. Holder's number 3, that to me is quiet title based on the deeds that everybody seems to hold. That is Mr. Holder's number 3, that is definitely as issue at trial. That is what the Plaintiff has complained about.

Let's go to number 4. And I sort of rename it or redescribe it as whether there are roads, town roads, county roads, that affect parcel 2 or parcel 3 that may traverse over the Young property. Separate from a private easement, these are government held roads. To me, that is not relevant in the case that we are having two weeks from now. I will not hear evidence on public roads. And the reason is if there are roads owned by the county or the town, whether those roads are open for use, whether they should be re-opened, whether they still exist, is a legislative function of government. It is not right now a judicial function and therefore we will not be discussing roads.

That brings us to the final issue that Mr. Holder

brought up and that is whether there is a private easement. I think what he's saying benefiting the Deena Holder properties or the Uncle Eddie's properties. Although, it was Mr. Holder that brought it up, I think mostly in his answer to complaint, I think it's still in the other pleadings as well. Does that sound right, Mr. Kline? It's a private easement that Uncle Eddie's is claiming?

MR. KLINE: Yes.

THE COURT: Okay. And I realize Ms. Peeples is not here.

MR. KLINE: Your Honor, for clarification. I know we're just having a discussion so obviously not trial. Obviously there's a private easement or depending upon the Court's determination is to who owns it. Could be a public property with a right of easement on a public piece of property. But I don't know. I sort of agree with the Court for the purposes of this complaint that's something best left for the next case, not necessarily this case.

THE COURT: I am very concerned about having any discussion or evidence about something that is considered or to be considered a public way owned by government.

MR. KLINE: Understood that from the court's prior --

THE COURT: Are we talking about the wagon easement?

MR. KLINE: Yes, exactly. So, if, and again, I don't want to get ahead of the Court and I don't want to interrupt.

THE COURT: No, no. This is the discussion I want to have.

MR. KLINE: Okay. So, from my perspective for Uncle Eddies - -

THE COURT: You can sit down if you want.

MR. KLINE: Thank you.

THE COURT: It's just us. Mr. Holder, at trial, I will make people stand up but we're just having a talk here.

MR. HOLDER: Absolutely.

MR. KLINE: Just one of those practice things.

THE COURT: I gotcha.

MR. KLINE: Anyway, it seems to me on my end, and I don't disagree where the court's heading here, is that the complaint alleges a certain amount of land that brings him in count certain parcels and the land that is there has a metes and bounds through its deed and then a survey. And I believe that there's evidence that's been developed that the person that did the deed made a mistake, which has been conceded. For the purposes of today I'll suggest, they'll come out at trial otherwise,

but, it's been conceded the Court, I believe, has the legal authority to draw a line. So, if the Court could focus on two parts that Mr. Frederick has indicated were drawn incorrectly and the Court were to determine where the monument or monument should be then the Court can draw the line as to what the property is, which would then narrow the discussion on the adverse possession because the adverse possession may not be, he may not have to adverse possess it because the Court would have already drawn the line and he would be on it. It would be his anyway.

THE COURT: So, the question is on the Wickline Plat, there is something called Parcel 3.

MR. KLINE: Um hum.

THE COURT: One of the questions before the Court, I think is, does Parcel 3 as described on the Wickline Plat, does that backup to and abut lots 11 through 14 of Stonecrest?

MR. KLINE: Um hum.

THE COURT: Or is there a gap?

MR. KLINE: Correct.

THE COURT: And is there a gap parcel?

MR. KLINE: Right, so - -

THE COURT: And if there is a gap parcel, one, does somebody have title by deed, or two, even if somebody has

title by deed did Mr. Young adversely possess it for the past thirty-four years anyways and who cares.

MR. KLINE: True. And I think if the Court were to look - -

THE COURT: Right?

MR. KLINE: Yes. Short answer is yes.

THE COURT: Yes.

MR. KLINE: So, if the Court were to look at the drawings which Mr. Frederick has - - I'm sorry. So, the deeds, the deed may be off by a number of feet because he's using certain things that are not there which the Court would factually have to determine as to where the monuments were to draw the line which the Court can draw on its own, legally, in my opinion.

THE COURT: Okay.

MR. KLINE: So, if the Court would move over to the defense, this goes to bifurcation, I'm perhaps getting ahead of myself.

THE COURT: Go ahead.

MR. KLINE: If the Court were to determine that first, take testimony from the experts that had indicated where the monuments should be so the Court on its own can draw where the line is, then the adverse possession either goes away or stays in for whatever land the Court determines by its own drawing of the line. The Court is

the only one that can draw - - The Court has to draw the line here.

THE COURT: But wherever I draw the line - - If I draw the line on the Stonecrest edge - -

MR. KLINE: The Court has to make a determination where the line is, right.

THE COURT: If I were to draw it on the Stonecrest edge, and I say, everybody in the world believed parcel 3, the western edge of Parcel 3 was the eastern edge of Stonecrest, then the case is over, theoridically. Because I could say Mr. Young has it by deed. Or if I say, no, the western edge of parcel 3 and the eastern edge of Stonecrest did not meet, they did not abut, there was a gap parcel, then I get to whether Mr. Young adversely possessed that gap parcel since 1988 and everybody believed it.

MR. KLINE: Correct, and I believe - -

THE COURT: Until Mr. Holder got a quick claim deed from Ms. Butts.

MR. KLINE: Correct. And I'm just suggesting the Defense has a number of experts that through depositions and this isn't surprise on Mr. Pembroke - -

THE COURT: Yes.

MR. KLINE: Would indicate that the line should be here and I think the Court has to hear that testimony as

to where the line has to go.

THE COURT: Right.

MR. KLINE: And then the Court has to make that determination to then get to the adverse, (unintelligible) adverse possession and called who had a sign up, who didn't have a sign up, who said get off the property, to bring out at the beginning would waste Mr. Pembroke's time of his eight hours if the Court's going to draw it up and give Mr. Young his - -

THE COURT: No, I think in his first eight hours he's going to be talking to me about adverse possession too.

MR. KLINE: Okay.

THE COURT: Right?

MR. PEMBROKE: I would assume.

THE COURT: I mean it's his case in chief. If he wants to prove adverse - -

MR. KLINE: I'm not speaking - - Mr. Pembroke's obvisoulsy - -

THE COURT: No, no, no. But I think Mr. Pembroke is an experienced attorney. I think he knows his client filed the complaint on sort of two independent theories that are not mutually exclusive, they could both exist. And he has his eight hours to prove to me deeds or adverse possession, right?

MR. KLINE: Yes.

THE COURT: Okay. If he proves deed or adverse possession don't we then go on to the easement, whether the easement exists?

MR. KLINE: Yes.

THE COURT: Okay.

MR. KLINE: In my opinion, yes.

THE COURT: But I think at the beginning of this little discussion you were telling me that I needed to find the line first.

MR. KLINE: Well, I think if you define the line, then the adverse possession argument factually either has to go forward or it doesn't go forward as you already indicated.

THE COURT: Right.

MR. KLINE: If I give them already what they say they have then we're done here.

THE COURT: Right.

MR. KLINE: Except for the easement portion.

THE COURT: But if I find the line where you want me to find the line, okay - -

MR. KLINE: Yes.

THE COURT: Does the finding the line where you want it to be actually get the easement all the way to Dogstreet Road?

MR. KLINE: I'm going to go with no. I don't believe

it does.

THE COURT: Then why are we having the talk about easement?

MR. KLINE: Well, we still - -

THE COURT: Well look - - Go ahead.

MR. KLINE: Well, that comes to a public county issue too only because if the land is there and the county has to provide the services, depends from where your drawn - -

THE COURT: Because that is what the case is about, right?

MR. KLINE: Right.

THE COURT: It's about getting sewer to that property.

MR. KLINE: Correct.

THE COURT: Okay. And the town said no a couple times to just go up Harris Lane or the alley or whatever it is, and so now there's an attempt to find a way to Dogstreet. That's what the case is about.

MR. KLINE: Um hum.

THE COURT: Okay. But you're telling me if I find the line, if I find that western edge of Mr. Young's property to create a gap with Stonecrest that gap doesn't go all the way out to Dogstreet? I'm trying to understand.

MR. KLINE: It goes all the way out. I stand corrected.

THE COURT: Okay.

MR. PEMBROKE: We would disagree with that.

THE COURT: Understood.

MR. PEMBROKE: We think it stops at our - - Even if you found it stops at our, at the beginning of our parcel 2.

THE COURT: Okay. So, you think even if there's the gap parcel that it stops somewhere before the panhandle?

MR. PEMBROKE: Yes, sir.

THE COURT: It probably corners, you think it might corner into Stonecrest?

MR. PEMBROKE: Yes, sir. But it does not run all the way to Dogstreet.

THE COURT: Okay. Which is why he had to go get parcel 2, attempt to.

MR. PEMBROKE: Parcel 3.

THE COURT: Well, yes.

MR. HOLDER: Parcel 2, Mr. Young has, I don't think there's any dispute that he's acquired profected his title to parcel 2.

THE COURT: Okay. Okay. Well, part of this discussion is, you know, I have been thinking whether to bifurcate that easement issue away from our three-day

trial. And I'm not sure that it makes sense to. Mr. Pembroke, do you wish to be heard on it at all?

MR. PEMBROKE: Your Honor, I - -

MR. KLINE: You can sit too.

MR. PEMBROKE: Thank you, judge. (Laughter) I, um, I don't see where, ultimately I don't see where it's of any advantage to bifurcate.

THE COURT: Okay.

MR. PEMBROKE: We've had trial scheduled since August. I think everybody, you know, at least has their own ideas about what the issues are. I think they compliment each other, although obviously they are distinct from each other but I think that, I think that both, in order to resolve the issues in this case obviously both issues have to be resolved.

THE COURT: Right.

MR. PEMBROKE: Now, there's a number ways it can be resolved and you listed a number of ways it can be resolved but I don't see any advantage overall to bifurcating it and saying, okay, we'll do this part now and we'll come back in six months or whatever else and we'll do the rest of it.

THE COURT: Well, the rest of it is sort of sitting in another case called the Holder verses Morral, et al. but that's, you know, whether I could move that issue,

whether there is an easement is an issue in that case too. Mr. Kline, do you wish to be heard on this bifurcation issue? I know you didn't bring it up it was more Mr. Holder but do you wish to be heard at all?

MR. KLINE: I'm only going to say no as to the Court's question. However, I think it helps the Court with the limitation of issues - -

THE COURT: Right.

MR. KLINE: - - if that matter is done first.

THE COURT: That we handle easement first?

MR. KLINE: To question on the drawing of the lines first.

THE COURT: I think I'm going to let Mr. Pembroke handle his case however he wishes to I think. I hear what you're saying but. Even if I find the line where you want me to he's going to present adverse possession for the past thirty-four years. He's going to hit them all at one time anyways. I'm hearing you.

MR. KLINE: Just, just - -

THE COURT: Okay. Mr. Holder, you had written a letter suggesting bifurcation and I want you to have an opportunity to be heard on it if you wish. If you want to tell me something more that's in the letter.

MR. HOLDER: Well first off I really appreciate you clarifying the public rights and the legislature that is

a huge, just a huge help to me in this case. I've been looking for direction and I mean with that I can limit a good substantial part of my witnesses.

THE COURT: That's good because you're not going to e able call fifty. There's just not going to be enough time.

MR. HOLDER: I mean most of them are the adjoiners to the property. And I do have deposition testimony.

THE COURT: So, what - -

MR. HOLDER: I didn't know if I had to have them in trial or not. I didn't know that.

THE COURT: I don't accept deposition testimony on the day of trial.

MR. HOLDER: So, I need to bring them to court.

THE COURT: It is against the rule for you to ask me to take deposition as testimony.

MR. HOLDER: I'm sorry, I didn't know that.

THE COURT: That's the Rule.

MR. HOLDER: Okay.

THE COURT: And I'm right on that Rule, right? Once they're dead - -

MR. PEMBROKE: Or unavailable.

THE COURT: Unavailable.

MR. HOLDER: Dead, I understand.

THE COURT: Well, that' one way to be unavailable.

There are other ways, I guess, but I don't know that any of them are here.

MR. HOLDER: Correct.

THE COURT: So, no, you cannot bring me a discovery deposition ask it to be exhibit number 1, I cannot accept that, okay?

MR. HOLDER: I kind of thought that was how it was.

THE COURT: Okay.

MR. HOLDER: So, basically I just need to ask them, hey did you see any No Trespassing signs behind you house. Yes or no. I think they're all going to testify no.

THE COURT: Okay.

MR. HOLDER: But, I haven't, you know, Mr. Young has a right to say otherwise until he agrees I can limit about ten witnesses if we could just agree that they're all going to say no, they didn't see any No Trespassing signs down their house so.

THE COURT: Well, that is maybe as Stipulation that you and Mr. Young through counsel can try to work on if that would limit the number of witnesses.

MR. HOLDER: It would limit a considerable amount to where I just need maybe some experts to rebut and really I can cross - - I think there's no dispute of the facts and the deeds and the lines that I can just cross. I

think (Garret Culver) is a good surveyor. I think Christopher Joliet knows title. I think we just go down through it and you'll see the facts pretty clearly so.

THE COURT: Okay. And so that I'm clear Mr. Holder, because I know we've had this discussion before in other hearings, and if I'm speaking out of turn and I'm wrong, please tell me. The position that you're going to take during trial is that there is a gap parcel between the eastern edge of Stonecrest and the western edge of the Wickline Parcel 3.

MR. HOLDER: Correct. So, we have this stone, right. But we need to find the other end of the stone. Where's it at right? It was a marked Hickory tree, where's it at. So, we need to determine, you know there's John Dowling, Gary Castle, George Nagle, Fred Frederick, they all have and those are all really good surveyors. I can bring any of them in and have them testify before you and let you take their evidence. I'm not trying to make a decision on boundary. This is title. It goes back to 1832. I can take it back even further if there's a dispute.

THE COURT: But I want to understand that you believe there's a gap parcel and that that's what Jennifer Butts deed to you for parcel 3.

MR. HOLDER: I - -

THE COURT: Quote unquote, "Parcel 3."

MR. HOLDER: I don't think there is a gap because what I think is - -

THE COURT: Okay.

MR. HOLDER: Okay, so when Mr. Young – -

THE COURT: I'm just confused. Okay.

MR. HOLDER: I know.

THE COURT: You told - - I just asked you the question and at the beginning of your answer you said, yes, there's a gap, and now you're saying no, I don't think there's a gap. I just, before we get to next Tuesday, I want to understand the parcel that you believe Jennifer Butts and Stonecrest in separate deeds, quick claimed to you – -

MR. HOLDER: Um hum.

THE COURT: - - is the Wickline Parcel 3 or is a gap parcel between Wickline and Stonecrest?

MR. HOLDER: It's neither of those. I think it's just crystal clear by law that Young took title finding on the lines of Deed L6596580, which was Leonard Dorsey. Those two lines are the second and third lines of the deed in 1832. Ms. Butts granted Thomas Davies (unintelligible) of finding on Jeffrey Young. That's all the same line because your priority in a boundary clause always say adjoiner. There shouldn't be a gap.

THE COURT: Is that line - - Is that line the eastern edge of Stonecrest?

MR. HOLDER: That's correct. The - -

THE COURT: So, there is no gap parcel? I'm trying to understand so when we get to next Tuesday. You clearly thought a lot about this case.

MR. HOLDER: And I have.

THE COURT: So, if you were to draw it on a picture for me, the picture that you draw, is it a gap, is there a gap between Wickline's Parcel 3 and Stonecrest or is there no gap? I just want to understand before we start our trial so that I'm hearing what you're saying.

MR. HOLDER: Are you familiar with the universal rule in the Billard (phonetic) versus Western Maryland Railroad case?

THE COURT: I don't care about that. I want to understand your theory of the case so that I can handle this trial in three days. Right now, I am confused as to whether the position the Defendants are taking in this case is that there is a gap between the western edge of Wickline's Parcel 3 and the eastern edge of Stonecrest or is there no gap, they are the same line?

MR. HOLDER: I think - -

THE COURT: Because what are these experts going to come in and tell me?

MR. HOLDER: I think when Davies got the parcel - -

THE COURT: What are the experts going to tell me? You've taken all their depositions.

MR. HOLDER: The expert surveyors are going to say that the priority of cause are always finding on the other lands.

THE COURT: Are they going to say there's a gap or there is not gap? Do you know?

MR. HOLDER: Mr. Frederick is going to say there's a gap between the title line and a fence.

THE COURT: Okay.

MR. HOLDER: Mr. Nagle is going to say that there was land that the grantor in Stonecrest used (unintelligible) to reserve upon himself. Gary Castle is going to say the same thing. And I don't know what Gary (Culver) is going to say because I haven't had a chance to depose him. He had never been on the property to survey when I first deposed him.

THE COURT: Okay, taking all those together, therefore are you saying that those experts are going to suggest that there's a gap?

MR. HOLDER: I think they're going to suggest that they - - When you granted a plat and you use specific courses and distances that that that there was no call to it in adjoiner on the plat so it did leave a gap. I

think that Jennifer Butts granted to Thomas Davies didn't leave a gap. And as a policy if you always call it to an adjoiner you never leave a gap.

THE COURT: Are you coming in here and telling me that the, that Jennifer Butts and the Stonecrest deeds granted you the gap?

MR. HOLDER: I think the Stonecrest deed actually - - I think by operation of law the Stonecrest deed is one that actually gave it to me.

THE COURT: Okay.

MR. HOLDER: I think Jennifer Butts properly during the Stonecrest - -

THE COURT: Because Stonecrest owned the gap.

MR. HOLDER: Yeah, because she gave up to the line of Jeffrey Young. I mean I think, but that's your decision.

THE COURT: Or is the gap inside of Stonecrest?

MR. HOLDER: I can make an argument if I owned lot 9, 10, 11 or 12 that I really own that. That grantor intended to me to give me everything. Why would he hold this little gap off of me? I could make that argument to you and I think I could support that with law. That every single lot owner in Stonecrest really owns to where the eastern boundary truly was.

THE COURT: And why do you own it?

MR. HOLDER: Well, I think that by using the affwards

of the grantors - -

THE COURT: If lots 9, 10, 11, 12, 13, 14 actaully own that because that's what the law says ought to happen, why do you own it?

MR. HOLDER: I'm not sure that the law actually says that. I can make an argument that the law - -

THE COURT: Oh, I thought you just said that, that that's what the law said.

MR. HOLDER: No, I just said I could make a good faith argument on their behalf.

THE COURT: Okay.

MR. HOLDER: It comes down to when you draw a plat - -

THE COURT: I just want you to understand - - Okay. I just want you to understand that when we start our trial two Tuesdays from now one of the things that I really want to understand is, is the western edge of parcel 3 on the Wickline Plat the eastern edge of Stonecrest? Do they touch? Or are they separated and there's a gap wedge in there? That Jennifer Butts and Stonecrest purportedly deeded to you through the quick claim deeds.

MR. HOLDER: By paper - -

THE COURT: That's what I'm trying to understand.

MR. HOLDER: Yeah, by papered title the eastern edge of parcel 3 is the boundary line as it's been for over

two hundred years.

THE COURT: Say that again.

MR. HOLDER: By paper title - -

THE COURT: Uh huh.

MR. HOLDER: - - the eastern boundaries – -

THE COURT: Of?

MR. HOLDER: Parcel 3.

THE COURT: Eastern of parcel 3.

MR. HOLDER: Um hum. Is the, the true title line as it's existed - -

THE COURT: Title line and it abuts what?

MR. HOLDER: Uh, and in 520 and in the Reeder property, which would have been - -

THE COURT: You still haven't answered my question. Are you taking the position that there is a gap between Young's property and the Stonecrest property or there is no gap? I need to know so that we can handle this trial in two weeks.

MR. HOLDER: Well, I believe adverse possession is instant so if he had perfected his title after whatever twenty years then Stonecrest gets granted out in 2003 then Young perfects his title and that's kind of, this is why we just go in circles on this case because we can't agree where the title line is.

THE COURT: That's not why we're going in circles.

Two weeks from now we are starting a three-day trial.

MR. HOLDER: Uh huh.

THE COURT: You have filed, I don't want to say hundreds of pages, because I don't know if it's hundreds.

MR. HOLDER: It has been.

THE COURT: Hundreds of pages of pleadings. And I want to get down to a very, very, very simple issue just so that in my mind I know what position you are taking at trial.

MR. HOLDER: I tried to do that.

THE COURT: At trial, are you taking the position that, that the edge of the Wickline parcel 3 and the Stonecrest edge are the same line or are you taking the same position they are not the same line, there's a gap between them?

MR. HOLDER: Yes.

THE COURT: Or are you taking a separate position that I don't understand?

MR. HOLDER: I'm taking the position that I know where the northeast point, the stone. I know - -

THE COURT: Is that the BQT stone?

MR. HOLDER: The BQT stone.

THE COURT: Okay.

MR. HOLDER: I know that for a fact and that's why I tried to - -

THE COURT: And what does that mean? That there's a gap or that there's no gap?

MR. HOLDER: It means by paper title there's a gap because I think when you grant somebody out a specific lot on a plat that's all you're granting. You're not, you're not saying you're binding on anybody's land.

THE COURT: So, you are going to be arguing and your evidence presented is going to be that there is a gap?

MR. HOLDER: Yes.

THE COURT: And that that gap is what Stonecrest deeded to you?

MR. HOLDER: That's what Stonecrest deeded to me.

THE COURT: And that's what Jennifer Butts deeded to you?

MR. HOLDER: I think what actually Jennifer Butts deeded to me was remaining lands down by Estes and remaining lands by Dogstreet because I think that the Stonecrest deed actually gave me that.

THE COURT: Quick claimed that to you. I got it.

MR. HOLDER: To parcel 3 and more than what was actually in parcel 3. Mr. Young's parcel 3 is about twenty-five feet deficient. So, even if Mr. Young wins and says what was Fred drew on his plat if he can actually prove where that is, I still have remaining lands.

THE COURT: Who does?

MR. HOLDER: I do, which is, I mean it's - -

THE COURT: Based on Stonecrest? The Stonecrest deed?

MR. HOLDER: Yeah, and, I mean, it's going to be about the size of this courtroom. It's not going to be near what it was.

THE COURT: Right. I understand.

MR. HOLDER: But I still need to get to it. So, it just, it leaves its problems that's all.

THE COURT: Okay. Understand. Okay. Okay. Okay. Well, my decision is that we are going to handle easement during the three-day trial. So, prepare for it within your eight hours. Okay.

MR. HOLDER: Okay.

THE COURT: Alright. A few final things. I think Mr. Holder had filed an appeal?

MR. HOLDER: I did but given your directive - -

THE COURT: And I think I had - - I had denied stay in this court:

MR. PEMBROKE: Um hum.

MR. HOLDER: Has the Court of Special Appeals acted on it in any way to anyone's knowledge?

MR. HOLDER: No, Your Honor, they have not.

MR. PEMBROKE: No, sir.

THE COURT: Alright. If they act on it before two Tuesdays from now somebody let me know, okay. Okay.

MR. HOLDER: Well, given your scope today, I'm going to withdraw that appeal.

THE COURT: I'm not telling you what to do or not to do.

MR. HOLDER: I know.

THE COURT: Okay. Before we move on to any questions you all may have, Mr. Holder, I wanted to have a quick discussion with you.

MR. HOLDER: Yes, Your Honor.

THE COURT: Okay. One of the last times we were together for a hearing I gave you a warning and the warning was to be careful about stating things as true when they were still at issue. And what I mean by that is you have a tendency, and this was the warning I gave you the last time we were together, you have a tendency to claim that somebody agrees with you simply because they did not deny every word you said in a pleading, okay?

MR. HOLDER: Okay.

THE COURT: Alright. You filed recently on May 28 a, an objection called the Red Herring brief.

MR. HOLDER: Um hum.

THE COURT: Where you quoted a lot of what you and I

talked about during some of those hearings.

MR. HOLDER: Yes.

THE COURT: And that's fine. I'm not upset with you in any way about quoting me, that's fine. That's why there are transcripts. Okay. But I want to read for you what you wrote.

MR. HOLDER: Okay.

THE COURT: Okay. So, we were having a hearing on March 24, and I'm summarizing. And I asked you something to the effect of, so, Mr. Holder, what you're saying is that when government puts a neighborhood on top of a road the road still exists. And all it takes is one citizen like you to say I want to drive my car on that road and that means therefore that the Selby's have to take down their fence, there is no forest conservation easement, you're allowed to cut down any trees you want because you've asked the government to open the road. It's a road, you get to use it. Sort of what I said. That was a question to you.

MR. HOLDER: Yes.

THE COURT: You responded, "Sure." And this is what you're writing in your pleading.

MR. HOLDER: Um hum.

THE COURT: You wrote, "Sure because the law is not status quo. The law is a constitution in the Fourteenth

Amendment and everybody has rights." Then you wrote, and I'm in paragraph 6 of your pleading of May 28, you wrote, "For Court seemingly accepted Justin Holder's legal grounds and authorities when the Court said, okay, okay." Alright, so now you've taken me saying simple words of okay.

MR. HOLDER: Uh huh.

THE COURT: And you've turned it into me making a decision, a judgment of this court that you're right about something.

MR. HOLDER: Um hum.

THE COURT: That's not okay with me. When I say okay during a hearing or a trial I'm just checking for understanding. I'm just letting you know I heard you. But for you to take it and put it in a pleading - -

MR. HOLDER: Um hum.

THE COURT: That I made a judgment in your favor or that I agreed with your interpretation of the facts of the law that is absolutely inappropriate.

MR. HOLDER: So, you don't agree.

THE COURT: Don't do it again.

MR. HOLDER: You don't agree, Your Honor?

THE COURT: Don't put words in my mouth as to what my judgments are when I say simple words of, "okay." That's just me telling you I heard you. I will consider it.

But that is not me making a judgment. For you to take it and say, "The Court seemingly accepted my legal grounds and authorities," no, I did not accept anything. Do not put into pleadings that I have made a finding, I have made a judgment or I have accepted your grounds or authorities for anything by simple words of "okay". I'm going to say the word okay a thousand times over the three-day trial. That does not mean I am finding in your favor. You will learn what I find when I issue a judgment. Is there anything that I'm unclear about that?

MR. HOLDER: I believe that you did accept my legal grounds and authorities.

THE COURT: I'm telling you again, that is not an acceptance of your legal grounds and authority.

MR. HOLDER: Thank you.

THE COURT: Do you understand?

MR. HOLDER: Thank you for the clarification.

THE COURT: Do not continue to claim that I have agreed with you on anything until you receive my final judgment in the case. Do you understand?

MR. HOLDER: I understand that.

THE COURT: Very well. Alright, Mr. Pembroke, is there anything that we're not clear on with regard to our three-day trial? Is there anything that you have a question about, timing wise, the eight hours, and what

the issues are? Is there anything we can clear up now before we decide to meet two Tuesdays from now?

MR. PEMBROKE: I don't believe so, Your Honor. Thank you.

THE COURT: Okay. Mr. Kline, is there anything you don't understand? Any questions I can answer for you?

MR. KLINE: One question.

THE COURT: Yes, sir.

MR. KLINE: We went through the timing. I understand that timing. You went through the closing and the limitation on clothing, closing, excuse me.

THE COURT: Yes.

MR. KLINE: If the Defense decides that they want to reserve some of their eight hours to present to add to closing because perhaps it will be better left to summarize it.

THE COURT: Or opening, maybe.

MR. KLINE: However.

THE COURT: Yes.

MR. KLINE: My point is are we allowed to steal time or reallocate time as long as we stay with your timing parameters?

THE COURT: Well, look, here's what's going to happen, right. We're going to get together on Tuesday morning. I'm going to ask if there are any preliminary

issues. Maybe there are, maybe they're not. Let's say they're not and we start at 9:00 a.m., and I look at Mr. Pembroke and I say give me an opening. If he takes five minutes, then that's not the hour I had allocuted to everybody or allotted, I'm sorry. And, I look to Mr. Kline and say, what do you want to tell me and, well, five minutes. Five minutes for Mr. Holder, five minutes for Brandy Peeples. Hey, we're at twenty minutes and we just saved ourselves forty minutes. So, I'll reallocate that as we go. As far as closing, you know, if we do all this time we get to Thursday afternoon, right, we're going to take a break at, you know, 3:00. We're either going to know right then and there, we're done or you might, the Defense might have ten more minutes or twenty more minutes before we can get to closing. Okay, we'll decide then. You know. So, I think the answer to your question is yes, you can shorten your closing in order to expand your eight hours. But we're going to have to decide that - - We're going to know that at about lunchtime on Thursday how many more witnesses you have and whether we're into rebuttal by Mr. Pembroke.

MR. KLINE: I just see opening being short - -

THE COURT: That's fine.

MR. KLINE: - - at the beginning. And having to relocate - -

THE COURT: I put one hour total just out of caution.

MR. KLINE: Understood. Got it. Understand compeletely. I just would want to reallocate that perhaps to the backend.

THE COURT: I think we would then re-adjust. Okay and at the first morning break I would go back to my office, I would calculate who did what and I would say okay, you have x number of hours left.

MR. KLINE: That was the only question I had.

THE COURT: And when we get to Thursday, when we start to bump up on 3:00 or 3:30, I think we're going to say, okay, look, it's time to wrap up all evidence and it is time to close. Right.

MR. KLINE: Um hum.

THE COURT: And if both of you say gosh, Your Honor, I only need six minutes to close can we just keep going with witnesses, maybe we'll do that. Okay.

MR. KLINE: Understood.

THE COURT: Okay. Do you understand the question, Mr. Holder?

MR. HOLDER: I do, I do.

THE COURT: Okay, so it think - - And this is a discussion you and Mr. Kline can have and you and Ms. Peeples as well. You know, you might be able to save yourself some time to get in more evidence in by going

short on opening. With me? Okay. Alright, what else Mr. Kline.

MR. KLINE: That was the only question I had. Thank you, sir.

THE COURT: Okay. Mr. Holder, what questions do you have about the trial, about timing, about the issues that we're going to be doing, about witnesses, anything because this will probably be our last time to talk before Tuesday?

MR. HOLDER: I really think you have a good understanding of the issues at trial now and, you know, I'm just going to apologize to you. I don't mean for anything to be personal. I respect you. This is just very personal to me what's going on. And, you know, advocating for yourself is difficult. And I'm, sometimes my words probably don't come across as I could represent myself better so. Anyway, I really appreciate the job you do for Washington County Circuit Court and I want you to know that.

THE COURT: Well, I appreciate that Mr. Holder. I will say to you that that that statement in your Red Herring objection and brief, I don't think that's actually the first time that you took my words and tried to make me having made a decision. I think it's about

your second time or maybe your third time. So, it's happened before and I'm concerned about that. Okay.

MR. HOLDER: I'll review it and make sure I advocate for myself professionally.

THE COURT: I'm concerned about that, okay. So, when we get to trial I am just suggesting maybe you have a discussion with Mr. Kline or Ms. Peeples who have experience being in the courtroom. Be a little bit careful about suggesting that a fact or a conclusion has already been made by me.

MR. HOLDER: Without an order.

THE COURT: If I haven't made - - I don't think I've drawn any conclusions or I've made any determinations in this case and it usually doesn't happen until my final judgment. So, don't tell me I've already decided something. Okay.

MR. HOLDER: Yes, Your Honor.

THE COURT: Okay. Alright. Anything else gentlemen then before next two Tuesdays? Yes, sir?

MR. PEMBROKE: Um, I would note that on behalf of Mrs. Holder no pre-trial statement was filed. And while - -

THE COURT: I was looking for one.

MR. PEMBROKE: I don't believe it's been filed even though it was ordered.

THE COURT: Yes.

MR. PEMBROKE: Um, I think that our discussion here has cleared up a number of points that would have been instructed in such a pretrial statement but I think it would still be helpful to know what witnesses she would intend to call and in terms of fact witnesses as well as expert witnesses.

THE COURT: Do you all have the ability to make that call to Ms. Peeples or? You could certainly pick up the phone and say, look, the judge is either going to order you to make a list and hand it in by, what's today, Tuesday?

MR. HOLDER: Yes, sir.

THE COURT: Hand it in by tomorrow or you all can have a talk with her on the phone. Do you know what I mean? Which would you prefer Mr. Pembroke?

MR. PEMBROKE: I'll call her.

THE COURT: Okay. Mr. Kline, is that okay that he has that discussion with her?

MR. KLINE: I have no problem with Mr. Pembroke. I was just going to say I could reach out and send an email but or call her as well.

THE COURT: Okay.

MR. KLINE: But if Mr. Pembroke wants to reach out, that's fine.

THE COURT: Okay. And I will tell the three of you if there's not a plan put in place that everybody knows who she intends to call by say 3:00 o'clock tomorrow, I'm giving any of you direction to call my office and I'll issue an order for her to alert the Court by noon Thursday who her witnesses are going to be. We're out of time. She should have done this a long time ago. All of you deserve to know who she's going to call as a witness. So, 3:00 o'clock tomorrow. Any of you can call my office and let me know if you have the answer. At 3:00 o'clock, by 3:00 o'clock you don't have the answer, call my office. I'll issue an order, give her nine hours to get it to me. Yes sir?

MR. HOLDER: On the last day of discovery Mr. Pembroke added two fact witnesses to the, to his list of witnesses and I hadn't had any opportunity to depose them.

THE COURT: Um hum.

MR. HOLDER: I don't really want to object at trial but - -

THE COURT: Who were they?

MR. HOLDER: Jesse Downs and Candace Settler. I didn't, I sent them a message and asked how he just kind of came about it on the last day of discovery. He didn't know going in earlier.

THE COURT: Jesse Downs and who?

MR. HOLDER: Jesse Downs and Candace - - Is it Candace Settler Mr. Pembroke, is that correct?

MR. PEMBROKE: Yes, sir.

THE COURT: Candace Settler. Do you expect them to be called?

MR. PEMBROKE: Quite possibly.

THE COURT: Okay. I hear what you're saying.

MR. HOLDER: I just - -

THE COURT: I'll entertain whether they get to testify or not is a decision we'll have to make during trial to have to be dependent of the reason that they're called.

MR. HOLDER: I didn't know if you wanted to hear a motion. I mean you're going to be the one trying the evidence so.

THE COURT: Well, I'll tell you there are different reasons that people can or cannot be called as witnesses. Certain of those witnesses must be disclosed in discovery, some of them don't necessarily have to be disclosed in discovery.

MR. HOLDER: I'll review the Rules.

THE COURT: I will review a motion if they are called and I'll hear the motion and I'll make a decision as to whether they will be permitted to testify. Okay?

MR. HOLDER: Okay, thank you.

THE COURT: I understand what you're saying. Anything else then?

MR. PEMBROKE: No, Your Honor.

THE COURT: Mr. Kline?

MR. KLINE: No, Judge.

THE COURT: Mr. Holder?

MR. HOLDER: No, sir, thank you.

THE COURT: Okay, I'll see you all two Tuesdays from now.

END OF PROCEEDINGS AT 2:19 P.M.

DIGITALLY SIGNED CERTIFICATE

I HEREBY CERTIFY that I reported verbatim by electronic device the proceedings in the matter of, *Jeffrey Young v. Justin Holder, et al.,* Case No. C-21-CV-20-371 in the Circuit Court for Washington County, on June 7, 2022, before the Honorable Andrew F. Wilkinson, Judge.

I further certify that the proceedings were transcribed by me to the best of my ability in a complete and accurate manner, and page numbers 1 through 43 constitute the official transcript of the proceedings.

In witness whereof, I have affixed my signature this 6th day of July, 2022.

Linde M. Cessna

Linde M. Cessna
Court Reporter